

SS-8 Determination—Determination for Public Inspection

Occupation
02DBT Director

Determination:
☒ Employee ☐ Contractor

UILC

Third Party Communication:
☒ None ☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:

Facts of Case

The firm is a small, nonprofit organization for the food and beverage industry. The worker was engaged to perform services as Director of Programs. The firm states the position was designed as a temporary to permanent role. The firm indicated that the worker accepted the terms of the position, with the possibility of becoming an employee of the firm after 90 days; the worker left the firm within the 90 day period. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

At the onset of the work relationship, the worker received training from the firm on tasks to be performed. The worker's output was reviewed by the firm's executive director, who edited and finalized the completed work. The worker received work assignments directly from the firm's executive director. The worker performed his services personally at the firm's location, following his own schedule. The worker was required to contact the firm's executive director regarding problems and complaints that needed resolution. The worker provided the firm with invoices of hours worked, for payment purposes.

The firm provided the worker with the office space, desk, office supplies, email address, and wireless Internet needed to perform his services. The worker provided his own computer. The worker did not incur work related expenses in the performance of his services. The firm paid the worker on an hourly wage basis for his services. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did he advertise as being available to perform similar services for others while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, and routine in the performance of his services. The worker's services were performed personally at the firm's location, using the firm's facilities, equipment, tools and supplies. The worker represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov