

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Business/Computer Services/Office/Sales

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 Limited Liability Corporation in the business of entertainment licensing which engaged the worker as a business affairs specialist from in 2015. There was no written agreement between the parties. However, the worker did provide e-mails from various parties of the firm as evidence to prove the worker was joining the firm.

The firm stated it only provided the worker with an explanation of the contract boiler plate. The worker explained the owner provided training and supervision on how he wanted contracts drafted, the firm's bookkeeper also provided training on how to use the firm's database. According to the firm the worker received her assignments by phone or e-mail. The worker stated she was given access to the database and told to maintain a list of renewal dates for all contracts and begin drafting new agreements for those near expiration, along with executing customs letters when needed. The firm indicated the worker determined workflow and methods, the worker argued the firm's owner dictated how contracts would be executed. The worker was required to maintain an Excel spreadsheet on a shared network drive which reflected the status of every licensee contract and detailed all correspondence with licensee for reporting purposes. Both parties agree the worker provided services 3 days a week on the firm's premises from 9:00 AM to 5:00 PM and from home. The worker performed 95 percent of the work at the firm's premises and 5 percent at her home. The firm's owner, owner's wife or bookkeeper were responsible for problem resolution. The worker stated she was required to attend occasional meetings. There were no meetings according to the firm. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. The worker worked exclusively for the firm. Her services were an integral and necessary part of the services the firm provided to its customers.

The firm furnished the worker with office space, desk, lap top, printer and office supplies, at no expense to her. The worker did not furnish any of the tools or equipment used in performing the services, except her personal cell phone. The firm determined the fees to be charged to its customers. The worker did not incur business expenses while performing services for the firm. The worker provided proof that regardless of how many hours the worker worked she was paid a salary of \$1,500.00 per week, and as such, was guaranteed a minimum amount of compensation. The firm's customers paid the firm. The firm did not carry worker's compensation on the worker. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The firm offered the worker the job. The worker provided e-mails to support the fact that she performed services in the firm's name and was represented as an employee of the firm. The relationship between the parties ended when the firm terminated the worker.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid a salary. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise her services, but the firm reached out to the worker and offered a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.