

SS-8 Determination—Determination for Public Inspection

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| Occupation 02OFF Office Workers | Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor |
| UILC | Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 law firm and the firm engaged the worker to provide part-time typing and work processing services for the firm's business. The worker had experience therefore no formal training was provided. The worker received assignments from a firm dictation business used by the firm through e-mails. The firm's office manager and firm determined the methods used by the worker to perform the services. The firm required the worker to contact the office manager regarding problems or complaints for resolution. The worker provided the firm with transcribed dictated reports. The worker performed the services 3 days per week on a part-time schedule at the firm's premises. The worker attended staff meetings when she was at the firm's place of business. The firm required the worker to perform the services personally.

The firm provided everything the worker needed in order to perform the services. The worker provided personal items. The worker did not lease anything or incur any business expenses. The firm paid the worker and hourly wage and the firm was paid through customers. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services.

There were no written contracts between the firm and the worker. The firm indicated the worker verbally expressed the desire to be an independent contractor. The firm provided no benefits. The firm did not know if the worker performed similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The relationship could be terminated at any time by either party without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time or part-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the firm received payments through the customers. The firm determined the level of payment for the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no written contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement and the worker requested to be an independent contractor. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm required the worker to perform the services personally at the firm's place of business. The worker performed the services under the firm's business name. The worker did no advertising as a business to the public.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Based on the autonomy of the working relationship we have determined the worker was an employee under common law.