

SS-8 Determination—Determination for Public Inspection

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 in the business of producing handmade leather goods. The worker was engaged by the firm to aid in the production of the leather goods. The firm did not withhold taxes from the worker's remuneration in 2017 and 2018.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The firm provided the worker with his work assignments. If problems or complaints occurred, the worker contacted the firm for resolution. The worker was free to make his own schedule and generally worked 40 hours per week. The firm stated that the worker was not required to submit reports or attend meetings. The worker performed his services at the firm's remote location. He was required to perform his services personally.

The firm provided the supplies, materials, equipment, and the property. The worker did not incur expenses in the performance of his services. The firm reimbursed the worker for repairs and supplies. It paid the worker on a salary basis and covered him under workers' compensation. Customers paid the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The firm did not prohibit the worker from performing similar services for others during the same time period. There is no evidence submitted showing the worker advertised his services or maintained a business listing. The worker performed his services under the firm's name. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The work relationship terminated when the firm moved production to another state.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm relied upon the worker's prior training and experience to perform his services. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. The firm was responsible for resolving any problems or complaints that may have occurred, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker performed his services on the firm's premises. He was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The firm provided the supplies, materials, equipment, and the property. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The firm paid the worker on a salary basis. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed were part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not make general benefits available to the worker, the firm terminated the work relationship without incurring liability or penalty. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.