

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 an individual real estate salesperson. The worker was engaged to perform data processing and administrative services. The worker received daily work assignments from the firm. The firm provided work related instructions, and supervised all work performed. The firm and worker both determined the work methods used to perform the services. The worker reported problems and complaints to the firm's owner for resolution purposes. The firm required the worker to perform her services personally, and she performed her services mostly at her home office, with minimal time spent at the firm's office location to attend required meetings.

The firm provided the real estate software programs needed to perform the services, and the worker provided her cell phone, computer, printer-copy machine, and membership dues. The firm paid the worker on an hourly wage basis for her services. The worker incurred expenses related to her duties (travel, client gifts). The firm reimbursed for work related expenses with the exception of travel expenses. The worker's economic loss/financial risks related to loss/damage to her office equipment.

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 she 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 performed her services remotely from her home office, under the firm's supervision, following the firm's instructions, schedule, and routine. The worker used the firm's software and her own office equipment to perform her services. The worker represented the firm's business in the performance of her 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 her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her 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 she performed her 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