

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Workers

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 learning and development staffing services. The firm engaged the worker to perform services for a firm client on a short term basis originally then extended the time frame due to the customers request. There was a signed Independent Contractor Agreement between the firm and worker with and attached Statement of Work addressing the services and working relationship between all parties. The firm reclassified the worker to an employee after the short-term period ended and the working relationship continues without any changes to the services and payment for the services.

The firm issued the worker a Form 1099-MISC then a Form W-2. The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case. Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We appreciate your coming into compliance with Federal Employment Tax Laws.

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 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. In this case, the firm not the worker had control over the methods and means used in the performance of the services. When a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. In this case the firm engaged the worker to perform services for the firm's customer and due to the customers request extended the working relationship and reclassified the worker to employee status.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. 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 the same hourly wage throughout the working relationship and the services remained the same. The customer paid the firm. The firm determined the level of payment for the services.

There was a short term independent contractor agreement entered into with regard to the services being performed and an attached scope of work indicated the services the worker would be performing. The firm paid the worker originally as an independent contractor and then based on the customers request to extend the working relationship changed the worker to an employee with no changes made to the services performed. We appreciate the firm's coming into compliance with Federal employment tax laws. 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.

Based on the information regarding the services the worker performed we have determined the worker was an employee under common law during the entire working relationship.