

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 a product manufacturer. The worker was engaged to perform services as a customer care representative. In this capacity, the worker performed product order data entry, assignment of inventory to orders, and communicated with customers regarding the status of their orders. The firm and worker entered into a non-disclosure agreement, whereby the worker understood that her services would be performed in the capacity of an independent contractor. The firm treated the worker status as both independent contractor and employee, issuing to the worker a Form W-2 and Form 1099-MISC at year-end, to report the monies received for services as both non-employee compensation and wages.

The firm provided the worker with training and instructions in all standard operating procedures for the customer care representative position. The firm's Director of Customer Care provided the worker with a set of accounts, and determined the work methods by which to perform the services. The worker was required to report problems and/or complaints to the director for resolution purposes. The firm required the worker to perform her services personally at its main location, following a set schedule.

The firm provided the facilities, equipment, tools, and supplies needed to perform the services. The worker did not provide any items needed to perform the services, nor did she incur work related expenses. The firm paid the worker on an hourly wage basis for her services, and customers paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services she performed for the firm.

The firm covered the worker under workers' compensation insurance. Employment benefits were available to the worker. The worker did not perform similar services for others, nor did she advertise as being available to perform similar services to the public. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

The indication that a 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location, using its facilities, equipment, tools, and supplies. The worker represented the firm's business operations 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 his or 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