

SS-8 Determination—Determination for Public Inspection

Occupation Business/Computer Services/Office/Sales	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 retail store that sells and repairs electric bikes. The firm engaged the worker as an assistant from 12/2017 to 09/2018. This was pursuant to a written agreement between the parties. The worker submitted a Form SS-8 after receiving a Form 1099-MISC from the firm. The firm replied with a Form SS-8.

According to the firm, the worker completed an application for the job. The firm provided training, instructions, and supervision as to the details and means by which the worker was to perform the services. The worker was hired as an assistant to the president of the firm. Her duties included bookkeeping, office work and answering the phones. She was also required to produce invoices, pay corporate expenses, and preform bank reconciliations. Both parties agree, the worker would receive her work assignments from the president of the firm, and he determined the methods by which those assignments were performed. She worked 5 days a week, from 8:00 am to 4:00 pm, and received regular remuneration for her services. The firm was responsible for problem resolution. She performed the services on the firm's premises. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm was responsible for hiring and paying any substitutes or helpers.

Both parties agree the firm provided the worker with all necessary materials, supplies, and equipment the worker at no expense her. The worker did not lease any equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The firm established the level of payment for the services provided. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the work relationship at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform the services for others. She did not advertise her services to the public, or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the worker resigned.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

The firm's 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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers.

The firm determined the rates charged to the customers and the customers paid the firm's business directly for the services provided by the worker. The worker was not allowed a drawing account against future earnings. The worker was provided remuneration in the form of an hourly wage and it was the firm who determined the worker's method of payment and paid the worker as an individual and not to a business account.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm.

Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she filled out an application for a job. This is a strong indicator that the worker is not an independent contractor.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.