

SS-8 Determination—Determination for Public Inspection

Occupation 03IEI Inspectors/Estimators/Investigators	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 security and private investigation business. The firm engaged the worker to perform consulting services according to assigned task orders for the firm's business operation. The firm and worker determined the methods used to perform the services. The firm's designated program manager was required to be contacted for resolution of any problems or complaints. The firm required the worker to provide the firm with work reports on services perform, days services were performed, and expenses approved for reimbursement in performance of the services. The firm allowed the worker to perform the services on a variable flexible schedule at the firm's place of business, firm designated locations or from home. The firm required the worker to perform the services personally and attend meetings as needed via conference calls or at the firm's designated locations.

The firm provided the worker with a computer, equipment, and material needed to perform the services. The worker did not lease equipment or space. The worker incurred business travel expenses and other expenses that were paid or reimbursed by the firm with the firm's prior approval. The firm paid the worker a set amount per day and the customers paid the firm. The firm carried workers' compensation insurance and deducted amount paid from the worker's settlements. The firm determined the level of payment for the services paid by the customers and agreed too with the worker. The worker's economic loss and financial risks were related to loss or damages to equipment as well as no reimbursement of some expenses per the firm. The worker indicated not having any economic loss or financial risks.

There was a signed consulting contract agreement entered into between the firm and the worker for a designated period of time as well as agreed upon task orders. The agreement required the worker to perform the services personally or obtain the firm's prior approval to hire any substitutes or helpers. The agreement address the quality of work expected by the firm and indicated the firm would be evaluating the services for quality purposes. The agreement address how the worker would be paid for the services, expenses, and other issues. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker as a contractor doing work for the firm under the firm's business name to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. When workers 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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

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 significant on-going 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 a daily rate and reimbursed approved business expenses. The customers paid the firm. The firm determined the level of payment the customers paid for the services and agreed to be paid to the worker to perform the services. The issue that the worker could suffer an economic loss and had a financial risk for damages or loss of equipment would not be considered having control over profit and loss in a working relationship. There was no legal documentation provided supporting the worker was responsible for these issues. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed consulting agreement indicating the worker to be an independent contractor. 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. The agreement addressed all working relationship issued concerning job, quality of services, review of services, payment, reimbursement of expenses, and job orders addressed specifics of jobs assigned to the worker to perform. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business operation on a regular and continuous basis over several months under the firm's business name for the firm's customers.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.