

SS-8 Determination—Determination for Public Inspection

Occupation
03MIS Janitor

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 janitorial cleaning business. The worker was engaged to perform services as a cleaning/environmental services technician. The worker submitted an employment application to the firm. The firm treated the worker status as independent contractor.

The firm provided the worker with instructions on what services needed to be performed on the job site. The worker was allowed to set his own work hours so long as he was off the job site before the customer closed. The firm and worker both determined the work methods by which to perform the services. The worker was required to report problems and complaints to the firm for resolution purposes. The firm required the worker to perform his services personally, with helpers engaged by the firm, and paid by the firm for their services.

The firm provided the mop buckets and carts, and the customer provided the facilities and cleaning supplies needed to perform the services. The worker did not provide any of the items needed to perform his services. The worker did not incur work related expenses in the performance of his services. The worker did not incur economic loss or financial risks related to the services he performed for the firm. The firm paid the worker on an hourly wage basis for his services. The customer paid the firm for services rendered.

The firm carried workers' compensation insurance on the worker. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed similar services for others, or that he advertised 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 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.

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, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's customer location, using equipment and supplies provided to him. The worker represented the firm's business operations in the performance of his 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 his 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 he performed his 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