

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.50 MiscLaborServices	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in business to provide workers to its clients, to help test military equipment, and to conduct training. The worker submitted an employment application to the firm, and was engaged to perform services as a subject matter expert consultant. His services included testing prototype military protective equipment, and providing feedback on how the equipment performed. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received training from the firm's owner, and received instructions from the firm's project manager on how to perform the services. The firm provided the work assignments, and determined the work methods by which to perform the services. Problems and complaints were reported to the firm for resolution purposes. The worker was required to perform his services personally, at client job sites designated by the firm. Daily staff meetings were mandatory.

The firm provided the worker with all equipment, tools, and supplies needed to perform the services. The firm reimbursed for expenses related to lodging, airfare, transportation to the job sites, and food. The firm paid the worker on an hourly wage basis for his services. Clients paid the firm for services rendered. The worker did not incur economic loss or financial risk related to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. There was no information provided for this case to evidence that employment benefits were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to the public while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

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 his services. The worker's services were performed personally, at locations designated by the firm. 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