

SS-8 Determination—Determination for Public Inspection

Occupation

Construction/Technical Services/Trades

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 web based news production business. The worker was engaged to perform services as a videographer. The firm initially treated the worker status as independent contractor, and then later changed the worker status to employee.

The firm provided the worker with training on use of its publishing/editing software and systems. The worker was trained on use of the firm's social media outlets. The worker was required to follow all guidelines and protocols set forth by the firm. The worker was required to perform his services personally, in the field, from his residence, and at the firm's office. Work assignments were collaborated with the firm. Work related problems were reported to the firm for resolution purposes. The worker was required to submit invoices to the firm regarding number of hours worked.

The firm provided the worker with use of its audio/video/editing equipment and supplies, and use of its software systems. The worker provided his own audio/video equipment, and vehicle. The worker incurred expenses for use of his own vehicle, and for equipment rentals. The firm reimbursed the worker for expenses related to fuel, mileage, and equipment rentals. The firm paid the worker on an hourly wage basis for his services. Clients paid the firm for services rendered. The worker's economic loss/financial risks related to loss or damage to the firm's equipment.

There was no information provided to support that the firm provided for workers' compensation insurance, or that employment benefits were made available to the worker. There was no information provided to support that the worker performed similar services for others, or that he advertised his services to others while engaged by the firm. The work relationship was continuous, and the parties agree that 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 performed his services in accordance with the firm's guidelines and protocols. He performed his services following the firm's training, instructions, work methods, schedule, and routine. The worker's services were performed personally at locations designated by the firm, using its equipment tools, and supplies. The worker represented the firm's business operations in the performance of his services. These facts support that 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, and therefore retained behavioral control of the work relationship.

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