

SS-8 Determination—Determination for Public Inspection

Occupation 03TEC Pest Control Technician	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input 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 pest control business and the worker was engaged as a pest control technician. The firm provided the worker with training on how to perform the services. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to provide the firm with daily work service reports. The worker performed the services originally on a flexible variable schedule and then subsequently full-time at the customers locations. The firm did not require the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided a truck, uniform, equipment, and materials per the worker and the firm did not answer the question. The worker did not lease anything or incur any business expenses. The firm paid the worker on a commission and hourly wage basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and products. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk per the worker and the firm did not answer the question.

The firm provided the worker with sick pay benefits when the worker was paid as an employee per the firm. 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 firm referred to the worker as an independent contractor initially and then as an employee to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

The firm reclassified the worker to an employee per the firm and per the worker a Form W-4 was completed when he was hired but a Form 1099-MISC was issued and a W-2.

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. 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 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 and the customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business but rather performed services personally for the firm's business customers on a regular and continuous basis under the firm's business name originally part-time and then full-time over several months. The firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

We are aware that the firm reclassified the worker to an employee during the working relationship and appreciate the firm coming into compliance with federal employment tax laws.