

SS-8 Determination—Determination for Public Inspection

Occupation

03TEC Technician

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 develops life-science tools for research and engaged the worker through an application process and contract to perform research and development services for the firm's business operation. The firm provided the worker with training on safety issues required by the firm and the landlord. The firm assigned the worker services to perform on a per project basis and both the firm and worker determined the methods used to perform the services. The worker was required to contact the firm's Chief Technology Officer regarding problems or complaints for resolution. The firm required the worker to provide the firm with monthly invoices, project updates, and research data generated reports. The worker was required to perform the services full time at the firm's lab location or other locations approved by the firm. The worker was required to attend staff meetings to update firm on projects. The firm required the worker to perform the services personally.

The firm provided the lab locations, equipment, materials, and supplies. The worker provided personal items. The worker did not lease equipment or space. The firm incurred travel expenses to firm's place of business and training. The firm reimbursed expenses according to the contract agreement. The firm paid the worker an hourly wage and the firm was paid through customer resources. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. The worker determined the level of payment for the contract services per the firm.

There were signed contracts between the firm and the worker indicating the working relationship structures, various clauses and issues as well as an attached Exhibit A listing work required to be performed by the worker. There was an amendment to the 2017 contract addressing changes to 2 sections of the contract. The contracts address work expectations, non-compete, non-disclosure, payments for services and expenses etc. The firm did not provide the worker with any benefits. The worker did not perform similar services for others or advertise as a business to the public per the worker. The firm did not know if these issues existed but the signed contracts addressed working for others issues. The worker performed services under the firm's business name. Both parties retained the right to terminate the working relationship without incurring any liability by providing a written notice.

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 significant on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. 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 an hourly wage and the customers paid the firm. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker.

There were contracts provided between the firm and the worker. The firm required the worker to perform the services full time at the firm's place of business according to the firm's rules and regulations. The firm required the worker to provide the firm with various work reports and receive the firm's prior approval to perform services for others. The firm paid the worker an hourly wage and reimbursed expenses related to providing services for the firm. The firm required the worker to perform the services under the firm's business name.

Both parties retained the right to terminate the working relationship without incurring any liability by providing an advanced notice. 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.