

SS-8 Determination—Determination for Public InspectionOccupation
03TRA EngineerDetermination:
☒ 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 telecom engineering and installation business. The firm engages the worker to perform engineering and installation overflow services for the firm's business. A letter of engagement indicates the firm hired the worker as a subcontractor for 90 days then would put the worker on payroll. The firm agrees to pay the worker an hourly wage, pay a daily per diem rate, and reimburse mileage when traveling. The firm requires the worker to follow engineering design procedures and provide the firm with reports of status on services. The firm's designated project manager assigns the worker services to perform as needed based on business needs. The firm, worker, and customers determine the methods used to perform the services. The firm requires the worker to contact the project manager regarding problems or complaints for resolution. The worker provides job reports daily by phone as required by the firm. The firm allows the worker to determine his daily routine and make all travel arrangements needed to perform the services. The worker performs the services at the firm's customers locations and from home. The firm requires the worker to perform the services personally and obtain the firm's prior approval to hire substitutes or helpers. Per the worker he is not allowed to hire substitutes or helpers.

The firm provides the jobs and specialty tools and worker provides personal tools of the trade. The worker does not lease equipment or space. The worker does not incur any business expenses as the firm reimburses all business expenses by paying the worker a daily per diem and mileage rate when traveling and submitting employee expense reports. The firm pays the worker an hourly wage for the services based on time reports and daily task reports submitted by the worker. The customers pay the firm. The firm does not carry workers' compensation insurance. The firm determines the level of payment for services paid to the worker and paid by the firm's customers. The worker can not suffer any economic loss and has no financial risk with regard to performance of the services.

There are signed documents indicating the worker to be an independent contractor for 90 days and then put on firm's payroll. There are various firm reporting forms provided for travel, time, and job reports indicating the worker to be an employee. The firm does not know if the worker performs similar services for others or advertises as a business to the public. The worker indicates no similar services are being performed for others nor does the worker advertise as a business to the public. The firm refers to the worker as an employee to the customers and a badge has been provided indicating the worker to be an engineer under the firm's business name. Both parties retain the right to terminate the working relationship at any time without incurring any liability.

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 has control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services being performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker has no financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm has the business investment and control over profit and risk of loss with regard to the services the worker performs for the firm's business. The firm pays the worker an hourly wage for the services and reimburses the worker for expenses incurred for traveling & mileage and the customers pay the firm. The firm determines the level of payment for the services paid by the customers and paid to the worker. These facts evidence financial control by the firm over the services being performed by the worker.

There was a signed letter indicating the worker to be an independent contractor for 90 days and then would be transitioned to payroll. There were also reporting forms with regard to services, travel, and time reports indicating the worker to be an employee. The worker does not perform similar services for others or advertise as a business to the public but rather performs services for the firm's business customers under the firm's business name on a regular and continuous as needed basis. The firm refers to the worker as an employee to the customers. The firm issued the worker a Form 1099-MISC in 2017 which included the reimbursement of expenses and mileage reimbursement. It is unknown if the reimbursements are issued under an accountable plan or not.

The relationship can be terminated at any time without incurring any liability. 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.

Based on the autonomy of the working relationship it has been determined the worker is an employee under common law.