

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Mangers/Supervisors/Administrators

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 in business to provide linguistic services. The firm engaged the worker to perform services as a project manager. The firm treated the worker status as independent contractor, and reported the worker's payment received for services performed as non-employee compensation.

The worker received training from other project managers. Work methods were determined by the worker. Work related issues were resolved by the firm. The worker followed a set schedule, and he performed his services personally at the firm's location. The worker was required to attend management meetings. When working late, the worker was required to provide the firm with a "late night e-mail" to provide the firm with details for the next day.

The firm provided the worker with the office space, desk, and computer needed to perform his services. The worker did not provide any of the items needed to perform his services, and did not incur work related expenses. The worker received payment from the firm on an hourly wage basis, as established by the firm. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (bonuses) were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others while engaged by the firm. The work relationship was continuous, and 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, schedule, and routine in the performance of his services. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools and supplies, and he 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.