

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors/Administrators	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" 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

Information provided for this case states the firm manufactures/assembles and sells boat lifts. The firm engaged the worker to perform services as its Director of Operations. In this capacity, the worker supervised the firm's supply chain subcontract vendors, production, logistics, and customer service. The firm treated the worker status as independent contractor, and reported the monies that the worker received for his services on a Form 1099-MISC at year-end.

The firm provided initial training to the worker on how to use its computer system, and the worker was also self taught on the firm's systems via use of manuals. The firm provided the worker with broad directives to improve operations, or to possibly lower costs. Work methods were determined by the firm and worker. Problems and complaints were reported to the firm for resolution purposes. The firm required the worker to perform his services personally, following its business hours. The worker's services were performed at the firm's location, at his residence, and at supplier locations. The worker also attended the firm's daily stand up meetings.

The firm provided the worker with work space, a computer necessary to access the firm's software operation program, and a desk phone. The worker provided many processes and forms/systems that he had used at other companies. The worker incurred expenses regarding lunches with suppliers, and use of his personal cell phone. The firm subsidized the worker's cell phone on a monthly basis, and reimbursed for other expenses incurred in the performance of his services. The firm paid the worker on a salary basis for his services. The worker did not incur economic loss or financial risks in the performance of his services for the firm.

The firm did not cover the worker under workers' compensation insurance. The firm paid the worker monthly regardless of days not worked, which included vacation days. There was no information provided to support that the worker performed similar services for others while engaged by the firm. There was no information provided to support that the worker advertised 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, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally at locations approved by the firm. 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 salary based. The worker had no opportunity for profit or loss as a result of the services he 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 available information, the worker is deemed a common law employee of the firm for federal employment tax purposes. You may visit www.irs.gov to obtain Publication 15, Publication 4341 for correction guidance.