

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Advertising Manager

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 operating a marketing consulting business and engaged the worker to perform account advertising management services for the firm's business. The firm agreed to provide the worker with training and training programs no equipment or materials. The firm agreed to pay the worker for services after completing a W-9 and invoice with 1st payment request. The firm assigned the worker jobs to perform via a software program with deadlines. The firm and worker determined the methods used and the firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm allowed the worker to perform services from home on a flexible schedule. The firm required the worker to attend meetings to discuss project goals, time-lines etc. The firm is required to perform the services personally. Substitutes or helpers were hired and paid by the firm if needed.

The worker provided a computer and Internet service. The firm provided the business clients and software. The worker did not lease equipment or space. The firm paid the worker an hourly wage. The customers paid the firm. The firm determined the level of payment for the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There was a signed Independent Contractor agreement between the firm and worker. The agreement addressed the services, payment requirements, termination clause, worker's status, ownership of materials, confidentiality and other issues. The firm provided the worker with bonus benefits and 5 paid vacation days per the agreement. The worker was not prohibited from performing similar services for others. The worker performed the services under the firm's business name. The firm could terminate the working relationship at any time at will but the worker was required to provide the firm with 21 days written notice per the agreement.

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. In this case the firm provided the worker with training and instructions on the jobs needed to be performed. The firm assigned the worker services to perform and provided deadlines to complete the services according to the firm's agreements with the customers. The firm allowed the worker to determine the work schedule and to perform the services from home. The firm required the worker to attend meetings and provide the firm with job reports. The worker was required to perform the services personally. 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 risk an employer/employee relationship is evident. In this case the worker performed services from home using a personal computer with Internet service. The firm assigned worker jobs to perform via a software program. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage upon submission of invoices showing date and hours worked. The firm determined the level of payment for the services. The worker did not have control over profits and loss with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor agreement entered into regarding the working relationship being established. The agreement addressed services, payment, termination, worker's status as independent contractor, ownership of materials, confidentiality, and dispute resolution etc. The firm agreed to provide the worker with bonuses and 5 paid vacation days per year. The firm did not prohibit the worker from performing services for others. The worker did no advertising as a business but advertised for the firm's customers businesses under the firm's business name.

The firm retained the right to terminate the working relationship at any time without incurring any liability. The worker was required to provide the firm with a 21 day written notice to terminate the working relationship. 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.

Based on the information provided it is determined the worker was an employee under common law.