

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Warehouse Manager	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

The information provided for this case indicates the firm is an online retail business providing its customers with packaging, and preparation of items for shipping and online sales. The worker was engaged to perform services as a warehouse shipping and receiving manager. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The firm provided the worker with training and instructions on how to make listings for certain sales site platforms, how to properly receive and inventory merchandise, how to look up the daily orders on the firm's computer, and how to prepare and mail orders. The firm provided the worker with the job requirements needed to meet its shipping standards. The worker was allowed to use his own work methods within those requirements to perform the services. The firm provided the worker with weekly information about what products needed to be shipped out. The firm required the worker to perform his services personally, at a warehouse, and the worker was to contact the firm regarding problems/complaints that needed resolution.

The firm provided the worker with the materials, equipment, tools, supplies needed to perform the services. The worker incurred expenses related to the pick up of inventory that needed to be shipped out. The firm reimbursed for fuel expenses incurred by worker in the performance of his services. The firm paid the worker on an hourly wage basis. Clients paid the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risks related to the services he performed for the firm.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and did not 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 training, instructions, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm, using the firm's equipment, tools, and supplies. The worker 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 information regarding corrections for employment taxes, you may obtain Publication 4341 on www.irs.gov.