

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors	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 indicated the firm develops and sells computer software for land development. The firm indicated the worker had no title and performed services under the worker's firm's business name and filed invoice under that business name (a copy was provided dated November 2016). The firm indicated there had been a verbal agreement he was an independent contractor. The firm issued Form 1099-MISC documents to the worker, not the worker's proposed firm name. The firm reported the worker's social security number, in a business identification format. The worker states he was the firm's Vice President of Training and Support. The worker provided copies of the checks issued from the firm, to him, not to a company, and copies of the quick reports showing consistent payments for tax years 2014, 2015 and 2016. The worker indicated services ended July of 2016. The firm indicated he was introduced to their company and gave him information about the software he agreed to develop training for. As customers called and requested the software, he would be notified to contact them and provided his services. The firm indicated they expected his availability to be adequate to perform services at his choice of location and at the firm's customer locations. The firm indicated they made space for him at the office if he chose to work there, he could come and go as he chose. No days were specified by the firm. The firm provided a laptop and projector specific to software operation. The firm's clients would occasionally by travel expenses and the firm would reimburse the worker. The firm stated he was paid a biweekly contracted amount (Forty-thousand) plus commissions. The customer paid the firm. The worker discontinued his services.

The worker has provided a copy of the firm's software business card that identified him as Vice President of Training and Support. He has indicated he was hired via a job interview and was given an annual salary of Sixty Thousand, plus commissions. He agreed the customer paid the firm. He agreed travel expenses such as mileage, fuel, airfare, rental car, hotel, parking, were reimbursed by the firm. The firm provided all equipment and supplies. The worker indicated he was given paid vacations, sick pay and paid holidays. He has indicated he continuously asked the firm when he would be put on payroll throughout the work relationship. He indicated he worked an eight hour day, forty hours per week. Training was provided on the specific software, methods and sequence needed to complete the work. The worker stated he was allowed to work from home, work to be completed at home was specified by the firm. the worker indicated he had a separate IT consulting business which is not active and did not pertain to the services performed for the firm. All work was performed under the firm's business name, under the approval of the firm. The worker indicated he was terminated by the firm.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business. The services were performed on a continuing basis for the firm, under the firm's business name. The worker was represented as the training and support contact person for the firm. The worker was guaranteed a set yearly salary, payments show those payments were made on a bi-weekly consistent basis, plus commissions.