

SS-8 Determination—Determination for Public Inspection

Occupation 05ATT Sign holder	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 firm is operating a directional sign marketing business for clients in various fields of business. The firm engaged the worker through a application process to perform services for the firm's business operation. The firm provided the worker with the necessary training and instructions on performance of services for the firm's business clients. The firm assigned the worker jobs to perform based on the firm's clients needs via phone or text messages. The firm and firm's clients determined the methods used by the worker to perform the services. The worker performed the services at firm designated locations during schedules determined by the firm and firm's clients. The firm required the worker to contact the firm's client or firm regarding resolution of problems or complaints. The firm did not required the worker to provide any work reports or to attend any meetings. The firm did required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The worker indicated the firm provided the signs and the firm indicated the other party provided sign-age and direction on where to market their items. The worker did not lease equipment or space. The worker incurred no business expenses but did incur transportation and meal expenses. The firm did not reimburse any expenses. The worker stated the firm paid the worker an hourly wage. Both the firm and worker indicated the customers paid the firm. The firm did not carry workers' compensation insurance. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There was a signed covenant to not compete and confidentiality agreement provided by both the firm and worker. The firm did not know if the worker performed similar services for others or advertised as a business to the public. The worker indicated no similar services were performed for others while performing services for the firm and the worker did no advertising as a business. The relationship cold be terminated by either party at any time without incurring any liability.

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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm provided the worker with all necessary training and instructions according to the signed agreement to perform the services for the firm's business and business clients. The firm assigned worker jobs to perform according to the firm's clients needs. The firm required the worker to perform the services personally. When a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. In this case, the firm and firm's clients 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.

The firm and firm's clients provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses but did incur personal expenses for commuting and meals. The firm did not reimburse any business expenses. The worker received an hourly wage for services from the firm and the clients paid the firm for the services. The worker did not determine the level of payment for the services or products used to perform the services. The worker could not suffer any economic loss and had no financial risk. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed Covenant Not to Compete and Confidentiality Agreement provided between the firm and worker. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The agreement addressed the job the worker was being engaged to perform under the firm's support. The worker was prohibited from working for a similar business or starting his own business to perform the same services as the worker was performing for the firm. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business operation under the firm's business name on a regular and continuous variable schedule basis over several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.