

SS-8 Determination—Determination for Public Inspection

Occupation 05FIW.4 Food Industry Worker	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 operates a restaurant. The worker was engaged to perform services as a server. The firm 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 training and instructions to the worker on how to perform the services. Work methods were determined by the firm and the worker. Problems and complaints that the worker could not resolve were reported to the firm for resolution purposes. The worker was required to perform his services personally, at the firm's restaurant, during the firm's business hours.

The firm provided the facilities, equipment, tools, and supplies needed to perform the services. The worker provided shoes and a uniform. The worker did not incur work related expenses. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services performed for the firm. The worker was paid on an hourly wage plus tip basis. Customers paid the firm for services rendered.

The firm carried workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others. No information was provided to evidence that the worker advertised his services to the public. The work relationship was continuous as opposed to a one-time transaction. The work relationship 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, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and 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 correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov