

SS-8 Determination—Determination for Public Inspection

Occupation Personal Service Providers	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 a personal fitness training business. The worker was engaged to perform services as a fitness coach, to perform small group training. The worker submitted an employment application to the firm. The firm treated the worker status as independent contractor, reporting the monies the worker received for her services as non-employee compensation.

The worker received instructions and training from the firm via shadowing, and through conventions. Clients scheduled appointments during times that the firm scheduled the worker to perform her services. The firm and worker both determined the work methods by which to perform the services. Work related problems were resolved by both the firm and worker. The firm required the worker to perform her services personally, at its location.

The firm provided the worker with the facilities, gym equipment, and company shirts needed to perform the services. The worker provided kettle bells, mats, and cleaning products. The parties agree that the worker did not incur work related expenses. The parties agree that the firm paid the worker on a salary basis for her services, and that clients paid the firm for services rendered. Neither party provided information to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

The firm did not cover the worker under workers' compensation insurance. The firm made employment benefits (personal days, paid vacations, sick pay, paid holidays) available to the worker. The parties agree that the worker performed similar services for others, and that she did not need the firm's approval to do so. The parties agree that the worker advertised her services to the public. The parties further agree that the work relationship could have been terminated by either party at anytime 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 her services. The worker represented the firm's business in the performance of her services. She performed her services personally, at the firm's location, using its facilities, equipment, and supplies. 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 her 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 she performed her 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