

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE.43 Instructor/Teacher

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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 as a non-profit neighborhood human services organization. It is the administrator and payor of a Federal/New York Educational Grant for a supplemental after school program. The worker was engaged to perform services as an academic teacher for the after school program. These services were separate from this full time teaching position. The worker submitted an application to the firm in response to its job posting regarding academic teachers, which the worker found through the school that he provides full time services. 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.

In the performance of his services, the worker arrived at the school site (Buffalo Public School #31) at 3:30pm, Monday, Wednesday, and Friday. He signed the firm's "employee time sheet", and went to the classroom assigned by the supervisor. The worker taught lessons, and monitored students completing homework, using educational computer software, and eating dinner. The worker monitored enrichment activities assigned each day by the supervisor. His services were required to be performed personally, at the school site.

The worker was required to attend training for Study Island computer software training and child care training, provided by the firm, and paid by the firm. The firm and worker both determined the work methods by which to perform the services. The worker was required to contact the on site coordinator regarding problems and complaints needing resolution. The firm required reports generated from Study Island educational program at set due dates.

The firm provided the computer software program subscription, pencils, art supplies, gym supplies, and use of public school space. The worker also provided supplies. The school provided use of its computers. The firm paid the worker on an hourly wage basis. The worker did not incur work related expenses, nor did he incur economic loss or financial risk with regard to the services he performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did he advertise as being in business to perform similar services, while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

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, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the location designated by the firm. 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 correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov