

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.49 Instructor/Teacher	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 childcare center teaching children ages 2-5. The worker was engaged to perform services as a teacher, whose duties included completing activities, assisting with children's hygiene, and nap time routines. 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 her services as non-employee compensation.

The firm provided instruction on activities, outside play, and nap times. The worker developed her own lesson plans. Work assignments were given by the firm's owner. The owner and worker both determined the work methods by which to perform the services. The services were performed at the firm's location, following the firm's business hours. The worker performed her services personally. Problems and complaints were reported to the firm's owner for resolution purposes.

The firm provided the facilities, and all supplies needed to perform the services. The worker did not incur work related expenses. There was no information provided to evidence that the worker incurred economic loss or financial risk in the performance of her services for the firm. The worker was paid on an hourly wage basis for her services. Customers paid the firm for services rendered.

There was no information provided for this case to evidence that the firm carried workers' compensation insurance on the worker. Employment benefits, (paid vacations, paid holidays, bonuses) were made available to the worker. There was no information provided to evidence that the worker performed similar services for others, or that she advertised her services to the public, while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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's services were performed personally, at the firm's location. The worker used the firm's facilities, and supplies, and she represented the firm's business operations in the performance of her 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 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