

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Housekeeper	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 worker did not specify any training that was provided by the firm and her instructions were to clean. The firm responded no training or instructions were given to the worker. The worker responded that she received her assignments from the owner and the owner determined the methods in which these assignments were performed, alternatively, the firm stated the worker could accept or decline and assignment and if an assignment was accepted, it was the worker who determined the methods in which these services were performed. The firm stated the worker usually would handle any problems or complaints via contact with the firm's customers, ultimately resolution would be a matter handled by the firm. The worker responded that she didn't have any problems or complaints. The firm stated the worker was responsible for invoices, which they attached a copy of. The worker stated she worked 3 days a week, however the firm stated the workers daily routine varied by the work she accepted. The parties agreed the services were performed 100% at customers location. The firm responded that the worker performs these services personally, while the worker stated she was not required to perform these services personally. If helpers or substitutes were needed, the worker stated it was the owner that would hire and pay them, however the firm states this did not apply since the jobs were small in nature. The firm stated no equipment, materials or supplies are provided to the worker and that the worker provided cleaning supplies. The worker did not lease any equipment, space, or facility from the firm. The firm stated the worker incurred expenses in the purchase of cleaning supplies which the firm stated were not reimbursed to the worker. The worker stated she received an hourly rate of pay, the firm disagreed and responded that the pay was an agreed amount per job. The worker was not allowed a drawing account for advances. The parties agreed that the firm's customers pay the firm, however they gave conflicting responses on who establishes the level of payment with the firm stating the worker was responsible for this, the worker disagreed. The firm stated the worker can incur a minimal economic loss or financial risk beyond the normal loss of salary. There were no benefits available to the worker. The firm stated the work relationship could be terminated by either party without incurring a liability or penalty, however the workers response indicates some consequences could result if the relationship were terminated. The firm submitted a non-compete agreement. The worker stated she does not advertise for the firm, the firm responded that they did not know of any advertising by the worker. The worker stated she is represented to the customers under the firm's business name, the firm differed in their response stating the worker was represented as a contractor. It is unclear on how the work relationship ended.

Analysis

Often because of the nature of the occupation it is not necessary that the worker receive extensive training, instructions or close supervision, the control factor is present if the person or persons for whom the services are performed retain the right to do so. Although the worker may not have been supervised directly while performing her services, this is not enough to characterize his relationship as a contract worker. The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The worker performed personal services on a continuous basis. The worker did not have a have significant financial investment in materials. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise her services. This is a strong indicator that the worker is not an independent contractor. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.