

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Aids/Assistants	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 a 501(c)(3) organization requested a determination of worker classification with regard to services performed as a full time employee but changing to part-time as needed. The firm is a government contractor who processes Medicare appeals. The worker was an appeals professional who wrote reconsideration decisions. The firm provided the necessary training and instructions needed by the worker to perform the services. The firm assigned the worker services to perform according to deadlines and allowed the worker to return jobs if unable to meet deadlines for reassignment. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact a firm designated supervisor regarding resolution of problems or complaints. The firm required the worker to provide the firm with work log reports submitted as invoices. The worker was allowed to perform the services on a flexible variable schedule from home. The worker was required to attend some refresher and security meetings. The worker was required to perform the services personally.

The firm provided equipment, materials, and supplies needed by the worker to perform the services securely from home through the worker's provided Internet service provider and phone. The worker did not lease equipment or space. The worker incurred expenses for Internet services, phone, and secure workspace. The other party reimbursed expenses incurred by the worker to complete assignments. The firm paid the worker a set amount per job and the firm was paid through the customer. The firm determined the level of payment for the services performed by the worker. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided the worker with retirement plan benefits. The worker did perform similar services for others while performing services for the firm with the firm's prior review and approval. Both the firm and the worker retain the right to terminate the working relationship at any time without incurring any liability.

Analysis

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period. It is irrelevant whether services are performed full-time or part-time. The autonomy of an entire working relationship determines a worker's status for federal employment tax purposes.

In this case the worker has experience and has been performing services full-time under the firm or firm's designated supervisor's direction and control over several years. The worker is required to perform the services according to the firm's policies and procedures as well as the firm's customers rules and regulations. The firm assigns jobs and deadlines to the worker for jobs needed to be performed and allows the worker to perform the services on a variable flexible schedule or return jobs if the worker is unable to meet the deadlines. The firm requires the worker to perform the services personally at the worker's home. The firm requires the worker to contact the designated supervisor regarding problems or complaints for resolution. The firm requires the worker to complete and submit job reports on services performed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provides the worker with a computer, monitor, and secure connection device. The worker provided home office, computer connection, and phone. The firm's customer reimburses expenses incurred to complete the jobs. The firm pays the worker a set amount per job and the customer pays the firm. The firm determined the amount the worker is paid for performance of the services. The worker can not suffer any economic loss and has no financial risk with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker.

There are no contracts between the firm and the worker. The worker does perform services for others and is required to complete a form for approval by the firm to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker does not advertise as a business to the public. The worker has been performing services personally for the firm under the firm's business name over several years. Both the firm and the worker retain the right to terminate the working relationship at any time without incurring any liability.

We have determined the worker to be an employee under common law for all services performed.