

SS-8 Determination—Determination for Public Inspection

Occupation

07ESW Enforcement/Security Workers

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 is a security guard service business. The worker, a licensed security guard, was engaged by the firm to perform security services at the firm's customer locations. The worker signed the firm's contractor acknowledgment form, and the firm treated the worker status as independent contractor. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non- employee compensation.

The firm provided work related instructions to the worker, and provided work assignments to him. The firm and worker both determined the work methods used to perform the services, based on the needs of the client. The worker was required to report work problems and complaints to either the firm's owner, the client, or to the client's property management for resolution purposes. The worker was required to perform his services personally at the firm's client locations. He was required to provide the firm with specific incident reports and/or daily logs.

The firm provided the uniforms, and IDs needed to perform the services. The worker provided his own shoes, and state licensing. The worker did not incur work related expenses. The firm paid the worker on an hourly wage basis for his services. Clients paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm provided workers' compensation insurance coverage on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others while engaged by the firm. Advertising was done via use of business cards. The work relationship was continuous, and could have been terminated by either party at any time 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 his services. The worker's services were performed personally, at locations designated by the firm, and 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, therefore retaining behavioral control of the work relationship.

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