

SS-8 Determination—Determination for Public Inspection

Occupation 07ESW.4 Enforcement/Security	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 provided security services to a private community and engaged the worker as an Independent contractor from February 2008 through January 2013.

The worker was trained by the firm on how to use the computer software used to register all visitors. The firm determined the methods by which the worker's assignments were performed. The worker would receive instructions from his supervisor on any instructions for the day and all pertinent information needed. If there were any problems or complaints with the worker's services they were elevated and resolved by the firm. The worker had a daily news report to complete. The worker performed his services Monday through Friday, from 6:00 AM until 2:00 PM. The worker performed his services at the firm's customer's location and performed his services personally.

The firm provided, while the worker provided his services. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The firm set the rates charged the customers and they paid the firm. The worker was compensated on an hourly basis. Payment by the hour, week, or month generally points to an employer-employee relationship.

The firm and their customer provided the worker with all the necessary materials, supplies, and equipment he needed to perform his job duties, such as a computer, telephone, headset, etc. The worker did not lease any equipment or space nor did he incur any expenses. The firm set the rates charged to their customer and they paid the firm directly. The worker was compensated on an hourly basis. The firm carried worker's compensation on the worker.

There was no written contract describing the terms and conditions of the relationship. The worker indicates he did not perform the same or similar services for others and there was no information submitted or discovered indicating the worker provided his services for others. The worker did not advertise, and did not maintain a business listing or a business office. The worker performed his services in the firm's name. Either party could terminate the relationship at any time without incurring a liability; in fact, the relationship has ended.

Analysis

After analysis of the common law factors as they related to this case, we find that the firm exercised sufficient control over the worker to establish the existence of an employer-employee relationship.

The firm maintained the right to direct and control the worker, which is an indication of behavioral control. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. The worker's services were performed on a continual on-going basis as opposed to a single one-time occurrence. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

The firm determined the rate charged the customers, provided the worker with all the necessary materials, supplies, and equipment, and paid the worker an hourly wage, which is an indication of financial control. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Payment by the hour, week, or month generally points to an employer-employee relationship.

There was no contract, no business risk for the worker, and either party could terminate the relationship at any time; indicating the relationship of the parties was employer-employee. The worker did not have a substantial investment in the equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.