

SS-8 Determination—Determination for Public Inspection

Occupation 09CMA.2 Courier/messenger	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 is a delivery services business. The firm engaged the worker through an ad and application process as a delivery vendor for the firm's business operation. The firm allowed the worker to accept or decline jobs, to perform services for others, and to hire substitutes or helpers. The firm provided the worker with the necessary instructions on business policies and procedures used in performance of the services. The firm offered the worker jobs to perform based on firm's customers requests. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any customer problems or complaints for resolution. The firm required the worker to complete and provide the firm with invoices of work performed for payment purposes. The firm required the worker to complete client specimen manifests following the instructions on the manifest and include them in provided pouches. The worker performed the services between the firm's customers pickup and delivery locations. The worker was not required to obtain the firm's prior approval to hire substitutes or helpers and the worker would pay them and not be reimbursed by the firm for the payment per the firm. The worker indicated neither the firm or worker hired any substitutes or helpers during the working relationship.

The firm provided the job opportunities and paperwork. The worker provided a vehicle and cell phone. The firm's customers provided the pouches used to hold specimens per the firm. The worker did not lease equipment. The worker incurred vehicle and phone related expenses. The firm did not reimburse any expenses. The firm paid the worker a set amount per pickup and delivery and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment the customers paid for the services and negotiated the rate of pay with the worker which could be accepted or rejected by the worker. The workers economic loss and financial risks were related to the amount of work the worker agreed to perform per the firm.

There were no signed contracts between the firm and the worker. A sample contract was provided by the firm which the firm stated the worker refused to sign. The worker did not perform similar services for others while performing services for the firm and the firm did not require the worker to obtain the firm's prior approval to do so. The worker did not advertise to the public as being engaged in a business. Both parties retained the right to terminate the working relationship at any time without incurring any liability for termination. The firm terminated the worker for not signing the contract.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker through an application process to perform delivery services for the firm's business operation. The firm allowed the worker flexibility in accepting or decline jobs offered but once accepted the firm required the worker to perform the services according to the firm's business policies and procedures. The firm required the worker to provide the firm with completed invoices and manifests. The firm required the worker to perform the services according to the firm's agreements with the firm's customers. The firm required the worker to contact the firm regarding any customer problems or complaints for resolution. The worker performed the services personally once accepted according to the firm's agreements with the firm's customers. The firm provided substitutes if the worker did not accept the jobs offered and the firm paid them. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the jobs and forms needed by the worker to complete. The worker provided a personal vehicle and cell phone. The firm paid the worker on a piecework basis and the customers paid the firm. The firm determined the level of payment for the services by the firm's customers and negotiated the payment made to the worker for performance of the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. Although the worker provided a personal vehicle and cell phone this would not be considered a significant financial business investment in operation of a business enterprise. The worker did not have control over profit and loss with regard to the services performed for the firm's business operation. The opportunity for higher earnings based on the amount of work being performed is not considered control over profit and loss in the operation of a business. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The firm did not prohibit the worker from doing 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. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business under the firm's business name over a period of several weeks. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.