

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a multi-service business, providing such services as notary, money transfers, bill paying, copying, faxing, vehicle insurance quotes, and sales of calling cards, bus tokens, and bus passes. The firm engaged the worker to perform services as a customer service representative. The firm treated the worker status as both employee and independent contractor, but no information was provided to evidence a change in the worker's services.

The firm provided the worker with training on how to use its systems and computer equipment. The firm provided work assignments to the worker, and determined the work methods by which to perform the services. The worker was required to perform his services personally at the firm's office location, following a set schedule. Problems and complaints were reported to the firm for resolution purposes.

The firm provided the facilities, equipment, tools, and supplies needed to perform the services. The worker incurred expenses for transportation to the firm's office location. The worker did not incur economic loss or financial risks related to the services he performed for the firm. The firm established the hourly wage paid to the worker for his services. Customers paid the firm for services rendered.

There was no information provided to evidence that the worker was covered under workers' compensation insurance, or that employment benefits were made available to him. The worker did not perform similar services for others, and did not advertise his services to others, while engaged by the firm. 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, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies 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.

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/her 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 available information, the worker is deemed a common law employee of the firm for federal employment tax purposes. You may visit www.irs.gov to obtain a copy of publication 4341 for filing/correction assistance.