

SS-8 Determination—Determination for Public Inspection

Occupation 03TEC Technicians	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 engaged the worker through an application process from a job posting to perform field engineering services for the firm's business. The firm assigned the worker to a field engineering position for a customer. The firm's customer provided the firm with job requirements and expectations as posted by the firm's customers. The firm provided the worker with the job requirements and expectations of the firm's customer. The firm's customer provided the worker with training at job sites. The firm and firm's customer determined the methods used by the worker to perform the services. The firm required the worker to contact the customer regarding problems or complaints for resolution. The worker performed services at the firm's customers' job sites. The firm's customer determined the work schedules. The firm required the worker to submit time reports. The worker performed the services personally.

The firm and firm's customer provided the jobs, equipment, materials, and supplies needed by the worker to perform services. The worker provided transportation and a professional engineering degree. The worker did not lease anything. The firm reimbursed the worker to travel expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. There was a signed job offer letter listing job requirements and expectations, reporting assignment, and hourly rate of pay for the position. The worker did not perform similar services for others or advertise as a business to the public. The worker performed services under the firm's business name for the firm's customer as assigned. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. In this case the firm engaged the worker to perform services for the firm's customer. The firm's customer provided the worker with training and instructions on job requirements and expectations. The firm required the worker to ensure the firm's customer was satisfied with the services performed for the firm's customers business. The firm and firm's customer determined the methods used by the worker to perform the services. The firm required the worker to perform the services during schedules and at locations determined by the firm's customer. The worker performed the services personally. In this case, the firm and firm's customer not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm and firm's customer provided the job, equipment, materials and supplies needed by the worker to perform the services. The worker provided licenses necessary to perform the services. The worker did not lease anything or incur any expenses that were no reimbursed or paid by the firm and firm's customer. The firm paid the worker an hourly wage and the customer paid the firm for providing the worker to perform services. The firm determined the level of payment for the services paid by the customer and paid to the worker. The worker could not suffer any economic loss due to significant on-going business capital investments being made and had no financial risk. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. There was a signed job offer letter indicating job requirements, expectations, and hourly payment for services. The worker did not perform similar services for others. The worker did not advertise as a business to the customers. The worker personally performed services for the firm's business customer under the firm's business name over several weeks.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the working relationship. 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.