

SS-8 Determination—Determination for Public Inspection

Occupation 02CSP Computer Services Personnel	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 in business as a digital marketing agency. The worker was engaged to perform services as a web designer and graphic designer, to perform web design services and to market materials. The firm indicated the worker signed an independent contractor agreement regarding the services to be performed. As a result, the firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker's services were computer based, working remotely from locations outside of the firm's location. The firm provided work assignments to the worker by placing available projects on an online project management service application. The worker attended meetings, and communicated with the firm via online communication applications. The firm and worker both determined the work methods by which to perform the services. The worker performed her services personally, and she provided the firm with completed work by uploading completed files for the firm's developers to implement. The worker did not have set hours to work, however all projects were required to be completed within the firm's deadlines.

The firm did not provide any of the items needed to perform the requested services. The worker provided her own computer. There was no information provided to support that the worker incurred work related expenses, or that she incurred economical loss or financial risks related to the services performed for the firm. The firm paid the worker on an hourly wage basis for her services.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others. No information was provided to support that the worker personally advertised her services to the public. 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 work methods, schedule, and routine in the performance of her services. The worker's services were performed at remote locations, following the firm's deadlines for completed work. The worker represented the firm's business operations in the performance of her 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 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 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 she performed her 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 the information provided for this case, the worker is classified as an employee for federal employment tax purposes. You may refer to Publication 4341, found on www.irs.gov, for correction guidance.