

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors	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 boutique fitness/cycling studio business. The worker was engaged to perform services as a manager of the fitness boutique. In this capacity, the worker was to provide services as a cycling instructor at the studio. The firm and worker entered into an employment agreement regarding the services to be performed. 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 his services as non-employee compensation.

The firm provided the worker with training and instructions regarding the services to be performed. The worker was required to adhere to the firm's policies and procedures. Duties that were not outlined in the agreements and job descriptions, were usually assigned by the firm's owner on a weekly basis, during the operations calls that the worker was required to attend. All services were performed in the name of the firm. Work methods used to perform the services were determined by the firm and worker. The worker was required to report work related problems to the firm's owner for resolution purposes. The worker performed his services personally, at the firm's location, and remotely from his residence. The worker was required to provide the firm with weekly progress reports.

The firm provided the facilities, office equipment and supplies, computer, business cards, and marketing materials needed to perform the services. The worker provided his own cell phone. The worker incurred expenses related to his cell phone bill, office furniture, fuel, meals, and clothing. The firm reimbursed the worker for expenses related to office furniture. The firm paid the worker on a salary basis for his services. Customers made payment to the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm provided for workers' compensation insurance. Employment benefits, (paid vacation, paid sick time, paid holidays) were made available to the worker. There was no information provided in this case to support that the worker performed similar services for others, or that he advertised as being available to perform similar services for others while engaged by the firm; The worker signed the firm's non-compete agreement. 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 performed his services in accordance with the firm's policies and procedures, following the firm's instructions, work methods, schedule and routine. The worker used the firm's facilities, equipment, and supplies. He represented the firm's business operations in the performance of his services. These facts support that 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, and therefore retained behavioral control of the work relationship.

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 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov