

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Repair/Maintenance Workers	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 building association that rents a building to a fraternity. The firm engaged the worker to perform general labor services, such as janitorial, maintenance, and repairs at the fraternity house. 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 firm would meet the worker in person at the house, or would provide to her over the phone a general list of projects that needed to be completed. The firm and worker both determined the work methods by which to perform the services. The worker was required to contact the firm regarding problems that needed resolution. The firm required the worker to provide a detailed report showing all completed work, the number of hours worked, and receipts for materials that she purchased for the jobs. The firm required the worker to perform her services personally at its fraternity house. Helpers were engaged by the firm and worker. The firm either paid the helpers for their services, or would have reimbursed the worker if she had made payment to the helpers for their services.

The firm provided the building supplies and materials, cleaning equipment and supplies needed to perform the services. The worker provided her own tools. The worker incurred expenses when she had to purchase supplies and materials needed for a job. The firm reimbursed the worker for those expenses. The firm paid the worker on an hourly wage basis for her services. The worker's economic loss/financial risks related to loss/damage to equipment/tools.

The firm did not provide workers' compensation insurance coverage on the worker. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed similar services for others, or that she 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. There was no information provided in this case to support that the worker provided bids to the firm regarding the work provided to her. There was no information provided to support that the worker performed services for the firm as part of her own business operations.

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 and work methods in the performance of her services. The worker's services were performed personally at the firm's location, using its equipment tools, and supplies. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investments, 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 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 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