

SS-8 Determination—Determination for Public Inspection

Occupation

07ESW.8 Enforcement/Security

Determination:

Employee Contractor

UILC

Third Party Communication:

None 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 operates a live music venue and bar. The worker was engaged to perform services as a doorman. His duties included checking identifications for legal age, and to ensure alcohol remained on the firm's premises. 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 worker attended training (TIPS) on his own. The firm provided the work assignments and instructions on how to perform the services. The firm determined the work methods by which to perform the services. Problems and complaints were reported to the firm for resolution. The worker followed a set schedule, and performed his services personally at the firm's location.

The firm provided the UV light, counter, chair, headset, shirts, and hats needed to perform the services. The worker provided his own ear buds for use with the firm's headset. The worker incurred expenses for transportation. There was no information provided to support that the worker incurred economic loss or financial risk related to the services he performed for the firm. The firm determined the amount paid to the worker for his services.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (personal days) were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others while engaged by the firm. The work relationship was continuous, and both parties retained the right to terminate the work relationship 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 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