

SS-8 Determination—Determination for Public Inspection

Occupation

01PLW Plant & Land Maintenance Workers

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 is a landscaping business. The firm engaged the worker to perform landscaping maintenance services for the firm's business operation. The firm provided the worker with initial training in prior year and subsequently verbally assigned worker jobs to perform based on the firm's business needs. The firm and worker determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's schedule varied based on jobs needed to be performed. The worker performed the services at the firm's customers job sites. The firm required the worker to perform the services personally. The firm's prior approval was required to the worker to hire substitutes or helpers and the firm would not reimburse the worker if he paid any.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items. The worker did not lease anything or incur any business expenses. The firm paid the worker per job and the customers paid the firm. The firm determined the level of payment paid by the customers for the services and agreed to the payment made to the worker to perform services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker by name or as a contractor performing services under the firm's business name to the customers. The worker personally performed services for the firm's business on a regular and continuous as needed basis over several months. Both the firm and the worker 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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm 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.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm determined the level of payment the customers paid for the services and the amount paid to the worker to perform the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's customer at the firm's customers job sites on a regular and continuous as needed basis under the firm's business name.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.