

**SS-8 Determination—Determination for Public Inspection**

Occupation

01PLW Plant &amp; 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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is a landscape business and the firm states the worker performed freelance internet marketing/website services, and social media as well as taking over the maintenance division of the firm's business at the worker's request. The firm states the worker completely took over the entire division and both they and the worker decided together that he would not be an hourly employee because he would run everything independently at his own leisure. The firm states the worker owned and operated his own business. The firm did not have a written agreement with the worker and the firm states that the worker was paid whatever he billed them. In 2017, the worker previously performed services for the firm as an hourly employee.

The firm states they provided no training or instructions to the worker and that he chose his work and he scheduled his own day. The firm states the worker determined how he completed his services. The worker emailed and contacted customers if any problems or complaints arose and once in a while the firm states the worker would ask them for advice. The worker was required to submit a weekly report to the firm of the jobs completed so that the firm could bill their clients. The firm states the worker's routine consisted of coming into their office, getting on their computer, scheduling his day and then go perform whatever duties he saw fit for the day. The worker personally performed his services at multiple customer businesses and homes. The firm states the worker was not required to attend any meetings but that the worker did set up his own meetings. The worker was responsible for the hiring of substitutes or helpers and the firm was responsible for the paying these individuals.

The firm states they provided a truck, trailer, and equipment to the worker in order to perform his services. The worker provided his daily supplies, clothes, and food. The worker did not incur expenses and the firm provided the worker with a fuel card. The worker turned in his hours and expenses to the firm at the end of each week. The clients paid the firm for services rendered by the worker and the firm states they paid the worker a set amount that the worker was comfortable making to perform his services. The firm states they could incur a loss as a result of the services provided.

The worker did not perform similar services for others and he did not advertise his services. The worker was represented to the firm's clients as a representative. Either party could terminate the work relationship at any time without incurring a liability.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the payer. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of the firm rather than an entity of his own. The clients paid the firm for services rendered by the worker. The firm was ultimately responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with freedom of action as to how he performed his services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

The firm states the worker owned and operated his own business. Our research indicates that the worker did co-own his own business prior to working for the firm in 2018. The Secretary of State website indicates this business went out of business in 2016. The worker's business was not a landscaping business. There was no evidence presented or found in this investigation that the W performed his services under this business name while working for and working on behalf of the firm's business. The firm had the opportunity to incur a loss or realize a profit as a result of the worker's services and not the other way around.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.