

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

Occupation

02AAD Wedding Floral Decor

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 worker obtained the job of making floral arrangements for weddings and events by filling out an application. The firm engaged the worker as an employee from 6/2018 until 9/2019. The firm did not reply to how the job was obtained by the worker. However, the firm stated the worker performed services for the firm from 3/18/2019 until 9/15/2019. The worker received a W-2 and then a 1099-MISC for the year 2018 when the job itself had not changed.

Both parties disagreed on how the worker had received instruction from the firm. Both parties disagreed on how the worker received instructions regarding the services to be performed by the firm. Assignments were given to the worker from the firm supervisor, as per the worker. The firm stated the assignments were received by a third party project management company. Internal research shows a work relationship between the two parties listed. No indication on who the third party is that the firm is referring to. Internal research shows pay documents between the firm and the worker. The worker performed services on various days for a duration of approx. 6-8 hours. Services were performed on the firm's premises and on the firm's customers premises. The worker stated that the worker was taught how to do every aspect of installing décor at weddings, including using the equipment and tools, pull inventory, clean up and perform maintenance at the firm's shop. Both parties agreed the firm was responsible for problem resolution. The worker was not required to submit reports. The worker was not required to attend meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. Services performed by the worker were an integral and necessary part of the services the firm provided to its customers. Both parties agreed the firm would have to approve any substitutes or helpers hired to replace the worker. Both parties mention that the worker was able to hire the helpers as well. Both parties agreed the firm would have paid for the substitutes the firm or worker hired.

A work space and equipment needed to perform services was provided by the firm at no expense to the worker. The worker stated that a company vehicle and company shirt were provided by the firm to perform the task at hand. This was also mentioned in the contract between the two parties. The firm determined the fees to be charged. The firm's customers paid the firm. The worker did not incur any significant business expenses. An hourly wage was paid to the worker. The firm did carry worker's compensation insurance on the worker.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform services for others. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. According to the worker, it was required that services performed were under the name of the firm and for the firm's clients. A company vehicle and branded firm logo shirts were used while performing these tasks. The relationship between the parties ended when the seasonal projects ended, although the worker had mentioned that the worker had quit.

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**Analysis**

The worker performed services on a continuous basis. Work was performed on the firm's and firm's customer's premises, on a regular schedule set by the firm. All significant materials and workspace were provided to the worker by the firm. An hourly wage was paid to the worker. A company vehicle and branded firm logo shirts were used by the worker while performing these tasks for the firm.

Internal research shows the worker did not hold the services out to the general public. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. The worker could not incur a business risk or loss. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, these facts are strong indicators that the worker is not an independent contractor.

Contractual designation of a worker as an independent contractor cannot outweigh evidence regarding the actual relationship between worker and taxpayer.

A seasonal, part time, or temporary worker does not indicate the worker to be an independent contractor.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.