

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

Occupation

02CON Wellness Associate

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**

CASE FACTS: The firm is a brick and mortar CBD store that sells quality Hemp-derived products. The firm is an entity that engaged the worker as a wellness associate from 11/2019 to 12/2019. The worker submitted Form SS-8 after receiving a pay document Form 1099-MISC from the firm.. The worker feels she should have been treated as an employee for Federal tax purposes. The firm replied with a Form SS-8.

The worker completed an application for the job. The worker stated that she was sent to other franchises for training purposes. The firm specified that it trained the worker on how to deal with the daily sales of the firm. According to the firm, the worker received all her work assignments from the manager. Her work assignments were the same daily. The worker was responsible for opening and closing the establishment, inventory as well as other various tasks. The worker asserted that the owners of the firm determined the methods of how those assignments were performed. The worker was not required to submit any reports. She worked 5 days a week, from 10:00 am to 6:00 pm. She received regular weekly remuneration for her services. The parties both agree that firm was responsible for problem resolution. She performed the services on the firm's premises. The firm contended that the worker was required to attend daily meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

Both parties agree that the firm supplied all necessary equipment and supplies at no expense to the worker. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses. The worker was paid an hourly wage. The firm's customers paid the firm. The firm established the level of payments for the services provided and products sold. Both parties confirmed that the firm did carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could 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 the services for others. She did not advertise her services to the public. The worker did not maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The worker was represented as a sales associate of the firm. The relationship between the parties ended when the worker gave her notice to return to school.

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## Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so. A continuing relationship was established rather than a one-time transaction taking place. The existence of a continuing relationship indicates an employer/employee relationship was established.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. 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. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship.

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 shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341