

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

Occupation

02COO 0Coordinator

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 in the business of operating private jets. The worker was engaged to create an aircraft maintenance manual for the firm's expansion of its certification as well as function as the firm's director of quality. He received a 2017 Form 1099-MISC for his services and continued to work in 2018 as well. There was no written agreement or contract.

The worker noted that he was provided with instructions from the firm regarding the priorities of the work assignments. However, the firm indicated that the worker had the knowledge to create the manuals and complete that contracted work. It was the worker that determined the methods by which the assignments were performed; however, the worker noted that the firm gave him the work assignments as well as determined the methods by which the assignments were performed. Both parties agreed that the firm would be contacted if any issues or problems arose. The firm agreed that the worker submitted manual status updates. The worker included that he also submitted certification timelines, aircraft pre-buy inspections and analysis reports. His daily routine was to report to the firm's office, weekdays, for regularly scheduled hours. Initially, he worked from home for about three weeks until the firm acquired an office. The firm noted that there were no set hours or schedule; he worked as needed to complete the manuals. Both agreed that the worker was required to personally provide the services.

The firm provided everything such as a computer, office supplies, business cards, and a company badge. The worker was reimbursed for travel expenses. The worker indicated that he was paid a salary and a per diem for travel. The firm, however, noted that he was paid piecework, but offered no definition or documentation to support that claim. Both parties agreed that the worker had no other economic risk. Both agreed that the customer paid the firm and that the firm established the level of payment for services though the firm noted that it was through mutual negotiation.

The firm noted that there were no benefits. Both agreed that either party could terminate the relationship without incurring a liability and that the worker did not perform similar services for others. The relationship ended when the worker's services were no longer needed.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm decided to expand its operations and engaged the worker to assist with the certification requirements. The worker was experienced in this line of work, and from documentation provided, he was listed as part of the firm's management team. He may have been given considerable latitude in his work schedule and hours. However, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. It would be unreasonable to believe that the worker was paid without expectations of the time/work to be accomplished. He submitted status and timeline reports. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. While both parties agreed that the worker worked from home as well as from the firm's office, the worker noted that it was only for three weeks, prior to the firm establishing an office space. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. So in essence, the worker worked from the firm's office. The fact that the worker was required to provide the services personally also indicated that the firm was not only interested in the results but the methods used. While the worker's services were for a temporary period of time, those services were continuous throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. While there was disagreement on how the worker was paid, he had no capital investment and therefore no other economic risk other than loss of his compensation. The firm indicated that the worker was paid piecework without an explanation or documentation. Note that payment of a salary 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.

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. There was no written agreement or contract. The worker was engaged to perform work required for the firm's operation expansion including the creation of manuals and the certification process. When doing so, the worker was not engaged in a separate business venture. The fact that his services were short-term also did not establish a business presence. He did not advertise or hold himself out to the public or have a separate business location. 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 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.

Please see Publication 4341 for guidance and instructions for firm compliance.