

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

Occupation

02COO Coordinators

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 submitted a request for a determination of worker status in regard to services performed for the firm from 2015 to 2017 as a political and community organizer. The job was specified as working to help win political races for school board candidates endorsed by the firm. As the work relationship progressed, the worker began taking on the role of a union organizer, doing the everyday work of the union. Supervisors trained and taught her about doing union organizing and working towards gaining a fair contract for teachers. The worker was required to meet goals, meet with her supervisors daily, and go through training. The training included how to speak with teachers, identifying what issues they cared about, and moving them to action. She was also trained to do regular teacher presentations about bargaining and she was assigned to certain school sites and meetings. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The firm's response states it is a public sector labor organization that serves to promote the wellbeing of its members and to improve the working conditions of teachers and the quality of education. From September 2015 through May 2017, the worker served as a political consultant. As a political consultant, she was responsible for political organizing, candidate recruitment, turnout to political events, helping oversee the firm's political canvass operation, and managing the firm's election campaigns. She also helped secure childcare providers for the firm's events. The worker was hired as an independent contractor and had discretion over her work hours, lunch and rest periods, and independent judgment over how she accomplished the firm's objectives. Services were performed under a consulting contract.

The firm stated it did not provide the worker with training. The worker was required to submit to the executive director and president the language she planned to use for text message blasts. The firm's executive director, president, and associate executive director provided work assignments. The firm's executive director and executive board determined the methods by which assignments were performed and assumed responsibility for problem resolution. As a political consultant, reports were not required. The worker did not have set hours. She was responsible for setting her own hours and did not have to clock-in or out. She had full control over her schedule so long as she fulfilled the firm's objectives and goals on the election campaign. As a political consultant, it is estimated the worker spent 60% of her time at the firm's office; 40% at her home/outside. The worker provided the firm bi-weekly invoices that stated hours worked. The firm paid her as invoiced. The worker periodically attended meetings with the firm's executive director and the executive board for updates on campaign. The firm required the worker to personally perform services. The firm's executive director hired substitutes or helpers. The firm paid them. The worker stated the firm provided training and instructed she could not perform services for others. After speaking with a teacher, the firm required her to report on the visit. Her daily routine consisted of meeting each morning, training, and then going to work sites to speak with teachers about the collective bargaining process. Issues were tracked by importance and teachers were asked if they would take action or support a strike. The work included daily goals of how many teachers to speak with and to get a certain number of responses to events. The firm required her to attend morning check-ins and a Friday staff meeting.

The firm stated it provided access to office space and a copier. The worker provided her own laptop, cellphone, car, and meals. The worker did not lease equipment, space, or a facility. The firm reimbursed the worker for lunch or snacks purchased for members during meetings. The worker was responsible for all other expenses. Customers paid the firm. The firm paid the worker salary; a drawing account for advances was not allowed. The firm carried workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The firm established the level of payment for the services provided.

The firm stated the work relationship could be terminated by either party without penalty. The worker did not perform similar services for others during the period of this work relationship. There was no agreement prohibiting competition. The worker is not a member of a union. It is unknown if the worker advertised. The firm ran an ad seeking a political consultant and the worker responded. The finished product consisted of information which was verbally reported/presented to the firm's executive director, president, and/or associate executive director. The firm represented the worker as an independent contractor to its customers. Services were performed on behalf of the firm. As a political consultant, the worker fulfilled her contract when the campaign she was hired to work on was completed. She was then offered a position as a temporary organizer; however, was paid by another business entity for services performed. The worker stated benefits were not provided. The firm represented her as its representative or political consultant to its customers. The work relationship ended when the job was completed and the contract was not renewed.

The consulting agreement states, in part, the worker would be paid a fixed monthly rate of pay. A work product developed by the worker would be the firm's sole property. The firm could terminate the agreement at any time, on written notice to the worker. The worker could not assign the contract or subcontract any duties without the firm's prior written consent.

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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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to a written agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. As the worker likely used her laptop, cell phone, and car for personal needs, they are not considered a significant investment. As acknowledged by the firm, the worker did not incur economic loss or financial risk. Based on the salary rate of pay arrangement the worker could not realize a profit or incur a loss.

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. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

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