

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

Occupation

COO - 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 is seeking a determination of worker classification for services performed for the firm as a project coordinator from February 2022 until March 2023. The worker filed a Form SS-8 because they believe that they were misclassified by the firm as an independent contractor when providing services as an employee.

The worker states that they were an employee of the firm because they did not have control over how work was to be completed, they were required to meet assigned deadlines and to complete assigned work, they were required to attend regular meetings and check ins, the firm required them to report on work completed, and the worker performed services for an hourly wage. The worker attached a copy of their offer letter which outlined their job duties and responsibilities, and general terms of their work role. The worker also provided meeting minutes, project update reports, documentation showing the firm's business structure, and invoices from the worker to the firm.

The firm states that they are a non-profit organization. The worker provided services for the firm as a project coordinator in an independent contractor position. The firm classified the worker as an independent contractor because all services for the firm were performed by independent contractors as the firm does not have any W-2 employees, services were performed remotely, and no employee benefits were provided to the worker. The firm provided a copy of the offer letter to the worker, invoices from the worker to the firm, and the scope of the worker's services performed for the firm. The firm's offer letter to the worker states that they would provide the worker with access to records, an email account, and would offer the worker a monthly stipend to cover certain telecommunications cost.

The firm states that they did not provide training to the worker as the worker relied on their professional experience. Project objectives were communicated to the worker by board leadership, and the worker determined the methods by which job duties were performed. The worker would coordinate with the firm's president only to provide updates and no supervision was provided. Work was performed remotely as the firm does not have a fixed office location, with no fixed schedule. The firm required the worker to email update reports to the firm and to attend project update meetings with no penalties if they did not attend. The firm did not require the worker to personally perform services. The worker could hire helpers or substitutes without need of approval from the firm, but to the firm's knowledge, this did not occur. The worker states that the firm trained the worker by having them meet with board members and committee leads, where they learned about current projects, their role, and their relevant tasks. The worker would meet with the firm's executive director, who supervised their work and assigned them tasks and projects. The worker met with the executive director each week where they provided progress reports. The firm determined the methods by which job duties were performed. The worker performed services from 8am until 4pm, unless there were meetings to attend, remotely from their home office. The firm required the worker to attend weekly check-in meetings, executive committee meetings, board meetings, and programming meetings and to perform services personally. The worker could not hire helpers or substitutes and was not responsible for their payment.

The firm states that the worker provided their own equipment and incurred job-related expenses. The firm provided access to platforms for document sharing only. Customers paid the firm. There was no payroll system used, and the firm paid the worker an hourly rate of pay based on invoices submitted by the worker. The firm would reimburse the worker for expenses only if the expenses were incurred for the firm. The firm did not carry worker's compensation insurance on the worker. The firm set the rate of pay for services performed and the price of products sold. The worker states that The firm provided a Zoom license and an office email account. The worker provided a laptop. The worker did not lease any space, facilities, or equipment. The worker did not incur any job-related expenses. Customers paid the firm. The firm paid the worker an hourly rate of pay with no access to advance pay. The firm did not carry worker's compensation insurance on the worker. The worker did not incur any financial risk or suffer a loss while working for the firm. The firm's contract established the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker performed similar services for other firms without the need of approval from the firm. There were no non-compete agreements in place between the parties. The firm did not know if worker advertised their services to the public. The firm represented the worker to customers as a contractor performing services under the firm's name. The worker ended the work relationship. The worker states that no benefits were offered by the firm to the worker. The contract required thirty days of written notice before either party could terminate the work relationship. The worker performed similar services for other firms and was required to get approval from the firm before doing so. The worker agreed to work certain hours in which they could not provide services for other firms. The worker was not a member of a union. The worker advertised services online where they showcased their services and work to potential clients. The firm represented the worker to customers as the project coordinator performing services under the firm's name. The contract was terminated due to an unexpected health emergency, ending the work relationship.

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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, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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.

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. In this case, there was a continuing relationship for a period of two years. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the firm's project needs, required the worker to report on services performed through emails and attend meetings, 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, day, 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. 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. Additionally, the offer of a stipend to offset telecommunications costs is not typical in independent contractor relationships where self-employed individuals are responsible for their own expenses. The firm set the worker's rate of pay and the price of products sold, further showing the lack of financial control by the worker. Based on the hourly 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.