

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

Occupation

02CSP Business/Computer Services/Office/Sales

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 a property management business and engaged the worker to perform cleaning services between rentals as part of a team. The firm posted available jobs and allowed the worker to accept or decline job offers. The firm provided check-sheets of services needed to be performed and followed up on inspecting jobs done for quality purposes. The firm and worker determined the methods used to perform the services. The firm required the worker to report on supplies that were needed to perform services. The worker performed the services on a flexible schedule at the firm's customers locations. The firm did not require the worker to perform the services personally and allowed the worker to determine the jobs to do. If the worker hired helpers the worker would pay them.

The firm provided all the equipment, materials, and supplies. The firm did not prohibit the worker from providing anything but indicated not aware of worker providing any personal items. The firm did not reimburse any expenses per the firm, the worker indicated the firm would reimburse supplies if needed. The firm paid the worker a set amount per cleaning, no drawing account was allowed. The customers paid the firm. The firm determined the level of payment the customers paid for the services and paid to the worker for performing the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the services performed.

There were no contracts provided between the firm and worker. The firm did not provide any benefits. The firm did not know what other jobs the worker may have had and per the worker he did not perform similar services for others. The worker did no advertising as a business to the public. The firm referred to the worker as a cleaner on a team to the customers per the worker and per the firm a contractor. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm determined the level of payment the customers paid and the level of payment the firm paid to the worker to perform the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. The worker performed services for the firm's business customers at the firm's customers homes on a team under the firm's business name. The worker performed services on a regular and continuous part-time basis over several months.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.