

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

Occupation

02CSP Computer Services Personnel

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 selling its custom made furniture. As the owner of the firm, you engaged the worker to translate emails and occasional conversations between you and your customers on an as-needed basis. You reported the worker's remuneration on Form 1099-MISC for 2017.

Information from the parties supports that you offer work to the worker. The worker is responsible for resolving any problems or complaints that may occur unless she needs your involvement. The worker answers emails and phone calls when she is available, and meets with clients on as-needed basis. The worker decides her day-to-day schedule, in no specific order or sequence. The worker works mostly at home but sometimes on your firm's premises or at your customers' locations. You stated that the worker is not required to perform her services personally; if the worker does not accept the assignment, you find someone else to translate.

You provide the worker with a laptop because the worker didn't have one and it is needed to respond to your customers' emails. You provide the worker with a cell phone corresponding to the number listed on your firm's website. The worker incurs internet expenses, any supplies needed, and gas and parking costs. You pay the worker on a commission basis negotiated between you and the worker, which is based upon the gross sales on which the worker assisted you. The payment is due when the sale is completed. You do not cover the worker under workers' compensation. Customers pay your firm directly at prices that you establish. Neither party indicated the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability. The worker occasionally posts on social media looking for similar work. She performs her services for you under your firm's name.

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## Analysis

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Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, although you rely upon the worker's prior training and experience to perform her services, you are ultimately responsible for resolving any problems or complaints that may occur, showing you retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The worker routinely provides her services from her home, on your firm's premises, and at your customers' locations; however, 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. Your statement that the worker performs services on an as-needed basis and is therefore, an independent contractor, is without merit as both employees and independent contractors can perform services when the needs of a business warrants. The fact that the telephone number listed on your website goes to the cell phone you provided to the worker, indicates that the worker is responsible for answering any calls made to that number. There is no indication that the worker engages and pays others to perform services for your firm on her behalf, which presumes that you are interested in the methods used to accomplish the work as well as in the results. These facts show that you retain behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. You pay the worker on a commission basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. Any assistance in sales made by the worker benefits your business, and you incur a loss for any lack of business. These facts show that you retain control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. 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. The worker is not engaged in an independent enterprise, but rather the translation services and sales assistance the worker provides are a necessary and integral part of your firm's business of selling your custom made furniture. 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. The worker may perform similar services for others; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.