

**SS-8 Determination—Determination for Public Inspection**Occupation  
02BDT DirectorDetermination:  
☒ 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 running a sports program in another state on a seasonal basis for children and engaged the worker a prior employee to perform services as both director and marketing Director in 2017. Previously the worker provided camp counseling services and other business related services as assigned through another Director. The worker created the marketing director job and made all business arrangements and ran the business for the firm in 2017. The worker had experience so no formal training was needed. The worker assigned jobs as indicated in the agreement when the job was offered and accepted by the worker in 2017. The worker determined the methods used to perform the services and resolved problems or complaints as needed except legal problems were referred to the firm for resolution. The worker determined her work schedule and depending on what services were being performed the location to perform the services. The worker attended a yearly business meeting with regard to business operations for subsequent year discussions. The worker hired substitutes or helpers and the firm paid them.

The firm provided everything needed at the camp for employees to perform the services. The worker provided personal items when needed to perform services. The firm leased the camp location where sleeping items were provided for the campers. The worker did not lease anything or incur any business expenses. The firm paid the worker a set amount which varied per each job. The customers paid the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There was a signed job responsibility agreement indicating jobs expectations for each job title, compensation payments for services, timing of payments, accounting requirements, property rights, termination, and other working relationship issues. The firm offered the worker bonus benefits. The worker did not perform similar services for others or advertise herself as a business but rather advertised the firm's business at various venues. The firm referred to the worker by her titles to the customers under the firm's business name. The relationship could be terminated at any time by either party 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 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 significant on-going business expenses. 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. The firm paid the worker a set amount per job performed and the customers paid the firm. The firm determined the level of payment for the services. 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.

There was a signed agreement for both titles of services performed for the firm that indicated job expectations and addressed other working relationship issues. The agreement stated the worker was an independent contractor for all services performed under 2 different titles. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm offered to pay the worker bonuses by meeting camp enrollment expectations. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the public. The worker personally performed services for the firm's business at the firm's place of business and from home. The firm referred to the worker as a firm director of the business and of a seasonal camp offered to children.

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.