

## SS-8 Determination—Determination for Public Inspection

Occupation

02LAW Law Clerk

UILC

Determination:

☒ Employee

☐ Contractor

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

Information provided indicated the firm provides law services. The worker performed services as an office assistant for the firm in 2017 and 2018. The firm indicated the intent of the initial business relationship, was for the worker to be employed by the firm as an independent contractor for a temporary period of time and not as an employee. Due to the nature of ongoing work activity the worker performed work duties to that of an employee. The firm has indicated therefore, in accordance with the state, they paid the worker 7.5% of the covered wages via check, as he was required as an employer, as if I would have paid her by W-2. The firm indicated all work had been performed on firm premises, on a daily basis. The work performed was assigned by the firm. The worker had been paid by the hour.

The worker indicated she performed services as a law clerk for the firm. She indicated she would arrive at ten am and work until six-thirty pm, depending on the work load. The firm had provided training from the firm owner and his assistant. The worker indicated she had been given a W-9 to complete, but actually completed a W-4 and submitted to the firm. All work assignments were given from the firm. The worker kept a task log and reported to the firm on the progress of the work. All work was performed on firm premises, utilizing the firm's equipment and supplies. The worker agreed she was paid by the hour. She was given vacation time.

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## Analysis

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 determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

### Conclusion:

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 fact services were to be performed on a temporary part time basis, does not make an individual an independent contractor. The worker did not own or operate her own business to provide those services. Training was provided by the firm, all work was performed under the firm's business name, as a representative of the firm. All work was performed on the firm premises, utilizing the firm's equipment and supplies. The firm had indicated they attempted to correct the issue, by issuing a check for the taxes. However, that is not the correct way to rectify, the incorrect 1099-MISC document that had been issued.