

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

Occupation

02OFF Office Workers

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**

Information provided indicated the sells goods online [REDACTED], their own site and other platforms. The worker performed services for the firm as a customer service rep for tax years 2017 and 2018. The firm issued Form 1099-MISC for tax year 2017. The worker disagrees she was independent. The firm states she was part of their customer service team ([REDACTED]) and performed services as a virtual assistant. The firm stated she was told in her interview she would be an independent contractor. The firm indicated they offered no benefits and allowed the worker to manage her own time, as long as the work got done. The firm state they trained her how to use basic software and processes as she had no prior experience. Her daily tasks were outlined during her trial period. After she managed herself, independent from the firm. She would contact the firm is there were any issues. She would e-mail the firm every so often with any trends she worked, or issues as a contractor she could not answer. The firm stated she was available from eight am to late afternoon. Services were performed in her own home or wherever she has internet access. No meetings were required. The firm stated she was paid a flat monthly fee. The firm provided her with a phone.

The worker stated she was a customer service associate taking inbound calls for the firm's customers. The worker stated she received a letter of employment that said she was an employee. A copy of that letter was provided, dated June 7, 2017. It stated she was a full time employee with a yearly salary of Twenty thousand plus quarterly bonuses. She indicated she had been hired on [REDACTED] for a test run, then was given full time hours and more training and access to resources. The worker stated she had to give weekly reports, e-mailed to the firm. The worker indicated she took call from eight am to five pm. (specified by the firm with two fifteen minute breaks, Monday through Friday. They then reduced her to part time. She also did live chats, e-mail replies, social media posts etc. She agreed she worked from home. She is required to perform services personally. The worker agreed the firm provided her phone and materials to try for social media. She provided her internet access. She stated she was paid by the hour. The customer paid the firm.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

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.

-Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

-The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

-Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a conv

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## Analysis

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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.