

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

Occupation

02OFF Office Worker

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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a benefit plans business and the worker was engaged to perform general office work. The firm states due to financial hardship and because they were going out of business, they did not have the money to make payroll in December 2017. The firm states an affiliated entity provided funds so that the worker would not suddenly be without money. The firm states the worker was paid on a 1099 basis for the month of December 2017 and the worker's relationship with them terminated at the end of December. The firm states the worker was later paid for the amount of taxes she would owe. The firm reported the worker's earnings from June 2017 through November 2017 on a Form W-2 and the worker's December 2017 earnings as well as reimbursement for taxes were reported on a 1099-MISC. The worker's services remained the same throughout the work relationship.

The worker was instructed on how to use the firm's specific programs and processes. The worker received her assignments via email from the firm and the firm determined how she performed her services. The worker was required to personally perform her services for eight (8) hours per day. The worker was required to notify her direct supervisor if any problems or complaints arose for their resolution. The worker attended meetings via the telephone. The firm was responsible for the hiring and paying of substitutes or helpers.

The firm provided all office furniture, equipment, and supplies to the worker in order to perform her services. The clients paid the firm for services rendered by the worker and the firm paid the worker on a salary basis. The worker did not have an opportunity to incur a loss as a result of her services.

The worker was eligible for paid vacation, sick, and holiday leave and insurance benefits. The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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As in this case and 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, the worker received training, assignments and instructions from the firm. The worker reported to a supervisor who oversaw her services. The firm treated the worker as an employee throughout the work relationship and the worker's services did not change. The firm states that they were unable to pay the appropriate payroll in December 2017. The worker provided her services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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

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.