

**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**

The worker requested a determination of employment status for services performed for the firm in 2017 and 2018 as a network technician. The firm is in the cyber security business and responded to our request for information as follows:

The firm is in the business of offering professional services, consulting, research, and education pertaining to cyber security. The worker performed services as staff support to the firm's security operations center during a time when additional resources were ready to support operational demand. The worker was engaged to monitor a system to alert and escalate to firm personnel when appropriate. The firm believes the worker was treated correctly as an independent contractor because the worker agreed to a short term contract, signed two independent contractor agreements with a beginning and ending date, completed a Form W-9 and was not excluded from working with others. Orientation was provided to familiarize the worker with the firm's systems and escalation procedures. The firm worked with the worker to determine the worker's availability and scheduling. The firm relied on the worker's skills to identify issues. The worker contacted the firm with issues. No reports were required. The worker performed his services at the firm's location following a mutually agreed upon schedule. The worker had access to the firm's monitoring equipment. The worker received an hourly wait and customers paid the firm. Either party could have terminated without liability. The contract ended.

The firm also sent in the two independent contractor contracts with the worker. The contracts stated that the worker's hours would be scheduled by the [REDACTED] supervisor. The contracts listed the worker's duties. The worker was required to maintain regular log entries, performed assessments and created tickets for further analysis. The contracts state that the worker will have additional responsibilities as outlined by the [REDACTED] supervisor. The worker was required to track his hours in the company's time tracking application. The firm designated when the check would be dispersed. There was a confidentiality agreement in place. The worker was required to give a 2 week notice before quitting.

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## Analysis

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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. Therefore, a 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.

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. 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. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker followed the firm's instruction and reported to the firm when problems occurred. The firm relied on the worker's experience to perform his services. The firm maintained the right to direct and control the worker in the performance of his services.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. The worker was performing his services as a representative of the firm; not for further pursuit of his own business interests.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker had no investment in the firm's business, received an hourly rate, and could not suffer a loss. The worker performed his services on a temporary basis as the firm needed extra help during a period of high demand.

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.

Firm: For further information please go to [www.irs.gov](http://www.irs.gov) Publication 4341