

**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**

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. We are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a membership association with a mission of maintaining and improve the civil rights, constitutional guarantees, and political freedom for its members and citizens of the country. The worker was engaged as a secretary from May 2017 to June 2018. The worker's tasks included drafting contracts and creating invoices. The firm believes the worker was an independent contractor while performing services for them because a state agency found the worker to be contract laborer having received a proper 1099 versus an employee receiving a W-2, the worker presented projects that she could assist them with at random, and she performed services for others while performing services for them. The firm reported the workers earnings on Forms 1099-MISC.

The worker received her assignments from the firm and the firm provided the worker with training and instructions on how to perform those services. The worker was required to personally perform her services at the firm's premises. The worker was required to notify the firm if any problems or complaints arose for their resolution.

The firm provided all equipment, supplies, and materials to the work relationship. The worker did not incur expenses and she did not have an investment in a business related to services performed for the firm. The worker did not advertise her services to the public as being in business to perform the same services. The worker did not have an opportunity to incur a loss as a result of her services.

---

## Analysis

---

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 states she received training and instructions from the firm on how to perform her services. Whether the firm provided the worker with direct supervision or detailed training, the need to direct and control a worker should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's organization's name rather than an entity of her 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 her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on an as needed basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

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

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, there was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services she performed for the firm and offering those services to the public. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages her.

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.