

## 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 initiated the request for a determination of her work status as a part-time office worker in tax years 2017 and 2018, for which she received Forms 1099-MISC. She stated she paid bills, collected rent, and made deposits. The firm's business is described as a medical building owner.

The firm's response was signed by the owner. The firm's business is a medical building owner and the worker provided services as part-time office clerk. She checked the mailbox, opened mail, sorted it, and filed.

The worker indicated the firm's owner as the supervisor, told her daily what tasks to perform and determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker performed her tasks on the firm premises Monday to Friday, four hours per day. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that there was no specific training and/or instructions given. The job assignment was to check the mailbox, open the mail, and have invoices and checks ready for the firm's signature; and it was the worker that determined the methods by which she performed her job. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises. The firm owner would have done the job if the worker was not available.

The firm and worker acknowledge the firm provided everything needed such as office space and printer; there were no expenses incurred by the worker. The worker did not lease equipment, space, or a facility. The worker was paid a salary/hourly wage. The worker was not covered under the firm's workers' compensation insurance policy. The worker responded that she was not at risk for a financial loss in this work relationship and that she did not establish the level of payment for the services provided; the firm answered as N/A.

Both parties concur there were no benefits extended to the worker, that either party could terminate the work relationship without incurring a liability or penalty, that the worker was not performing same or similar services for others during the same time frame, and that the worker quit.

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## Analysis

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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.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

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 firm's statement that the worker was a contractor 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. 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.

## 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.