

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

Occupation

02OFF Research and Development

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 firm stated the worker received no specific training, but did receive case by case instructions, the worker responded that he received on board instructions followed by ongoing instructions from the CEO. The parties agreed the worker received his assignments primarily from the CEO and occasionally from managing partners or departmental leaders. The firm stated the worker determined the methods in which these assignments were performed, however the worker stated it was a collaborative process between himself and the CEO. If problems or complaints were to arise, the firm responded that this was handled on a case-by-case process, additionally the worker would communicate directly with the CEO regarding these issues. The worker was required to submit weekly reports to the CEO (files attached) The firm stated the worker's daily routine consisted of coordinating with parties in other parts of the world, the worker responded that his normal work week consisted of 40+ hours a week, Monday through Friday with occasional weekend work, in addition to travel as requested by the CEO. The firm stated the worker performed these services at the location of his choice prior to November of 2019, thereafter, the worker was supplied sleeping quarters by the firm. The worker replied that his services were performed 60% of the time at the firm's various offices and 40% of the time telecommuting. The worker stated he had meetings with university partners and meetings the firm's CEO as requested. The parties agreed that the worker performed these services personally. The firm replied that they supplied the worker with an email address and the worker supplied all other working equipment. The worker responded that the firm supplied software, work sites, office equipment, and resources and that he supplied his own computer. The worker did not lease a space or facility. The worker stated he incurred expenses for travel which the parties agreed these expenses were reimbursed by the firm. The worker stated that he received a salary, the firm replied that the worker was paid per invoiced amounts and that amount varied. Both parties agreed that the worker was not allowed a drawing account for advances. It was acknowledged by both the firm and worker that the customer's paid the firm. The firm stated the worker established the level of payments for services, however the worker disagreed with this and replied that the firm and partner universities were responsible for establishing the level of payment. The worker responded that to his knowledge, he would not incur an economic loss or financial risk associated with the work relationship. The worker stated the benefits available to him were paid vacations, paid holidays, and bonuses. They both agreed that the work relationship could be terminated by either party without incurring a liability or penalty. The worker replied that he was not performing the same services for others during the same time, the firm stated this was unknown. No advertising was done by the worker. The worker responded that sometimes while telecommuting he would process a product at home in which the firm provided instructions, the finished product would be provided to the firm and sometimes with the university partners. The firm stated the finished product is owned by the company. The worker said he was represented to the firm's customers as Head of Research and Development and a member of the firm's executive team. The firm replied that the worker was represented under the company name. According to the firm, the worker issued them a letter terminating the work relationship, the worker replied that he unilaterally terminated employment.

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**Analysis**

While there are minor inconsistencies in the facts presented, there are sufficient details agreed to by the parties to render a common law determination. Based on the application of the three categories of evidence, the worker in this case was under the direction and control of the firm to the extent necessary to meet the firm's business objective. The worker's service was integral to the firm's business operation. The worker performed personal services on a continuous basis. The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The firm provided all significant materials to the worker. Thus, he did not have a have significant financial investment in the firm's materials. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. The firm's contention that the worker was treated as an independent contractor pursuant to an agreement for him to be treated as such is without merit. It is the firm's responsibility to treat workers according to federal employment tax guidelines and law. Neither the firm nor the worker has the right to decide whether the worker should be treated as either an independent contractor or an employee. Worker status is dictated by the characteristics of the work relationship. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee.