

## SS-8 Determination—Determination for Public Inspection

Occupation

02RET Retail 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 firm is in the customer window covering business and the worker was engaged to perform manufacturing, sales, and installation services for the firm's business products. The worker had previously worked for the firm and was paid as an employee. The firm provided the necessary training and instructions for the worker to perform manufacturing and installation services of the firm's products. Customer orders determined the assignments given to the worker by the firm to perform. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints for resolution. The worker performed services at the firm's place of business and from home. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers directly and indirectly through the installer.

The firm provided tools, equipment, materials, and a gas card. The worker sometimes provided personal items. The worker leased space to perform personal hobby work and the firm paid liability insurance for the use of space as a showroom. The firm reimbursed the worker for business expenses the worker incurred with regard to manufacturing or delivery of firm products. The firm paid the worker an hourly wage and commissions on sales. The firm did not allow drawing accounts. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products and the worker had some leverage in making sales.

There were no contracts between the firm and worker. The firm provided the worker with leads to contact for sales. The firm determined the terms and conditions of sales. All orders were submitted to the firm for approval. The sales were arranged at the firm's place of business or customers locations. The firm paid the worker bonuses and provided a gas card. The worker did not perform similar services for others. The worker advertised the firm's business with firm provided business cards. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a different type of business. The worker did not incur any business expenses with regard to the services performed for the firm's business. The firm paid the worker an hourly wage, piecework, and commission on sales. The customers paid the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by the firm over the services performed by the worker. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker personally performed services for the firm's business and firm customers on a regular and continuous as needed basis under the firm's business name over several years. The worker did not advertise as a similar business to the public but did advertise the firm's business with firm provided business cards and equipment.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

We have determined that the worker was an employee under common law.