

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

Occupation 03CRA Construction/Technical Services/Trades	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 his work status as a motorcycle mechanic in tax years 2012 through 2016. The firm's business is described as motorcycle sales and repair shop.

The firm's response was signed by the firm's president. The firm's business is described as retail sales and service of power sports equipment. The worker performed assembly of new vehicles and repairs.

According to the firm, there was no training or instructions given to the worker and no specific job assignments; the firm posted a list of what needed to be done. The methods to use to perform the tasks were determined by the worker. Any problems encountered by the worker were directed to the owner of the firm. There were no reports or invoices generated by the worker; the worker accepted payment based on the hours logged by the firm. The firm responded that the worker's services were rendered 100% of the time at the shop. The worker was not required to perform the services personally; the firm indicated the worker could hire and pay for helpers or substitutes.

The worker stated he was given training and instructions on what jobs to do and how to do the work that was assigned by the firm's owner. The firm indicated the firm determined the methods by which the performed his services. Any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered at the firm's business location. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm and worker concurred that the firm provided materials and supplies and most tools; the worker provided some tools. The worker did not lease equipment, space, or facilities. The worker indicated he did not incur expenses in the performance of the job unless he made a mistake and it was deducted from his check. Both parties acknowledged the worker was paid an hourly wage/for hours worked. The customer paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker responded that he was not at risk for a financial loss in this work relationship unless he was injured and incurred loss of pay. The firm indicated the worker established the level of payment for services provided or products sold; the worker disagreed.

The firm and worker agreed that no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm responded the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm noted that the worker's services rendered on firm's premises only and that the worker had no interaction with the customers.

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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.

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.

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.

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.

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.

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.