

SS-8 Determination—Determination for Public InspectionOccupation
03INS InstallersDetermination:
☒ 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 as remodeling and drywall installation business. The firm engaged the worker through a friend to perform general laborer services for the firm's business operation at the firm's customers job sites. No training was provided by the firm but general job instructions were given by the firm on the job sites. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm for resolution of problems or complaints. The firm determined the work schedule and job locations. The firm required the worker to perform the services personally. Substitutes or helpers were hired and paid by the firm as needed.

The firm provided job materials and supplies. The worker provided personal tools and equipment. The worker did not lease equipment or materials. The worker did not incur any significant on-going business expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did carry workers' compensation insurance. The worker could not suffer any economic loss nor had any financial risk with regard to performance of services other than loss or damager to personal items used. The firm determined the level of payment for the services.

There were no contracts between the firm and worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. The firm referred to the worker by name as a subcontractor/ laborer of firm's business to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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 risks an employer/employee relationship is evident. In this case, the worker had no significant financial business investments and no control over profit and loss due to on-going significant business capital outlays being made. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for services. 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 did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did not advertise as a business to the public. The worker performed services personally at the firm's customers job sites under the firm's business name on a regular and continuous basis over a period of about 2 months.

Both parties 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.