

SS-8 Determination—Determination for Public InspectionOccupation
03MIS LaborerDetermination:
☒ 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 operating a remodeling and plumbing, heating, and air installation business and engaged the worker to perform laborer services for the firm's business operations. The worker called the firm regarding job needed and was instructed by the firm to show up if he wanted to work and they would give him jobs if available. The worker signed a statement indicating he was a self employed contractor worker for the firm's businesses and released the firm's businesses from liability of any injuries incurred when performing services.

The firm provided the worker with job instructions if available and worker came in to perform services. The firm and worker determined the methods used to perform the services. The firm required the worker to contact other workers at the job site to resolve problems or complaints. The firm stated no reports were required and the worker stated he provided job reports to the firm. The worker performed services on a flexible schedule at the firm's customer locations or firm's place of business. The firm did not require the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The worker used the firm's equipment and material to perform the services. The worker did not lease anything or incur any business expenses. The firm did not reimburse any expenses. The firm paid the worker and hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed.

The worker signed a statement indicating he was an independent contractor and released the firm's businesses from liability of any injuries while working as a contractor. The firm did not provide any benefits. The firm stated the worker did perform services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The firm was not sure if the worker advertised as a business to the public. The worker indicated he did not advertising and did not perform similar services for others. The worker performed the services personally under the firm's business name. 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 financial business investments and no control over profit and loss due to 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 firm was paid by the customers for jobs performed. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. The risk of an injury would not be considered having control over profit and loss in the costs related to running a business operation. These facts evidence financial control by the firm over the services performed by the worker.

The worker signed a statement indicating he was an independent contractor and released the firm of any liability from injury while performing services for the firm. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for the firm but per the firm did have other jobs. 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 personally performed services at the firm's customers job sites or firm's place of business on a flexible as needed and available basis under the firm's businesses names.

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.