

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

Occupation

03MIS Miscellaneous Laborers

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**

Information provided indicates the firm is a surplus broker selling aircraft parts. The worker performed services in 2016 and 2017 in the firm's packing/ shipping department and in warehouse operations. The firm indicated he was hired and paid as an independent contractor. The firm issued Form 1099-MISC for tax years 2016 and 2-017. The firm indicated training was provided regarding the firm's packaging standards. Work assignments were give via communications with the firm. The firm stated the worker would arrive at the warehouse, inspect the ware house, package and ship orders to the firm's customers. The firm did not indicate the hours worked. The firm indicated all work was performed on the firm premises, utilizing the firm's equipment and supplies. The worker was paid by the hour, with paid holidays and bonuses. The customer paid the firm. The firm indicated the worker quit.

The worker indicated he received training from other co-workers. The worker would be handed an envelope with instructions on what was to be packed and shipped, or verbal instructions were also given. he indicated he worked from eight to four-thirty with a half hour for lunch. He agreed all work was performed on the firm premises. Meetings were attended when held. He was required to perform his services personally. The worker agreed the firm provided all equipment and supplies. He agreed he was paid by the hour, gas provided (via company credit card) if he dropped things off to be shipped for the firm. Comp time was given for overtime. No overtime was paid. He agreed the customer paid the firm. The worker agreed he quit.

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## Analysis

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We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. Training was provided by the firm, indicating they expected services to be performed in a particular manner. All work was performed under the firm's business name, in order to assist the firm in fulfilling their contract. The services were performed on a continuing basis, and not a one time business transaction.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. The firm provided the work space, equipment, materials and supplies. The worker was paid by the hour for the work performed, indicating no opportunity for profit or loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## 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.