

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

Occupation

03MIS General Laborer

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**

According to the firm, the worker obtained the job by a bid, however, the worker said the job was obtained by a referral. The worker stated that the firm engaged the worker as an employee from 1/1/2019 until 10/8/2019. According to the firm, the worker performed services 10/22/2018 through 3/01/2019 and again on 3/13/2019. The firm stated the worker was in training when the firm hired the worker in 2018, but did not specify who was training the worker. The firm believed the worker was an independent contractor because the worker filled out Form W-9, signed the firm's contract and had a DBA. The worker stated the firm convinced the worker to file for an LLC with the county so that the firm wouldn't have to pay payroll taxes. I did not find an LLC or DBA on the worker using internal research. No SCH-C or SCH-SE filed as per internal research for current and any previous tax years filed.

Both parties agreed the worker received instructions/training regarding the services to be performed for the firm. Assignments were given to the worker from the project manager/ supervisor on where the job location would be. The firm mentioned the worker received bids on open jobs. The worker performed services starting at 8am until 5pm as stated in the contract. Services were performed on the firm's customers premises. Both parties agreed the firm was responsible for problem resolution. Both parties agreed the worker was required to submit reports of before and after pictures of the job the worker completed. Both parties agreed the worker was not required to attend meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. Services performed by the worker were an integral and necessary part of the services the firm provided to its customers.

Most significant materials and equipment needed to perform services were provided by the firm at no expense to the worker. The worker stated that the firm determined the fees to be charged. However, the firm stated the worker determines the fees that the customers pay to the firm. Both parties agreed the firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not incur any significant business expenses. Neither parties agreed on how the worker was paid. The worker stated the firm paid the worker an hourly wage. The firm stated that in 2018, the worker was paid hourly rate since the worker was working hourly on the firm's community homes. However, the firm mentioned the worker was paid per job completed and provided a weekly check.

A contract between the firm and the worker was provided by the firm. The worker did not mention the contract that was signed between the parties. The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform services for others. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. The worker was required to perform the services under the name of the firm and for the firm's clients. Neither party agreed on how the relationship between the parties ended. When the worker ended the relationship, it was due to lack of hourly pay for the services provided by the worker to the firm. The firm mentioned that the contract between the two parties came to an end. There were no more jobs for the worker to perform services for the firm.

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**Analysis**

The worker performed services on a continuous basis. Work was performed on the firm's customer's premises, on a regular schedule set by the firm, 8am-5pm as stated in contract. All significant materials were provided to the worker by the firm. A weekly check was paid to the worker. Benefits, bonuses, sick pay and holiday pay were not available to the worker. No workmen compensation insurance was available to the worker. The worker was not a member of a union.

The worker could not incur a business risk or loss. The worker did not hold the services out to the general public. No advertising was done by the worker. No office, shop, or other place of business was held by the worker to indicate a business presence. No LLC or DBA was found using internal research.

The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, these facts are strong indicators that the worker is not an independent contractor.

A Form W-9 was signed. A Form W-9 is an information form requesting taxpayer identification and certification. Therefore, this does not indicate the worker to be an independent employee.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.