

## SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Repair/Maintenance Workers

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

The firm is in the business of providing cleaning services. The worker was engaged by the firm to perform cleaning services. The firm reported the worker's remuneration on Form 1099-MISC for 2017.

According to information provided by the firm, the worker was required to send a text to the firm when she arrived and departed each property. She was required to follow the firm's posted job description and use the firm's final clean checklist. The firm provided a daily gas compensation amount, and set the piece rate for cleaning and laundry services. The firm deducted an amount from the piece rate for each item not done correctly according to the job description and final clean checklist.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. The firm provided the worker with her work assignments. She performed her services according to the firm's customers' requirements. If problems or complaints occurred, the worker contacted the firm for resolution. The worker performed her services at the customers' locations.

The firm stated that the worker provided the cleaning supplies, equipment (mop, broom, vacuum), car, and gas. The firm paid the worker on a piece-work basis. It did not cover the worker under workers' compensation. Customers paid the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The firm did not prohibit the worker from performing similar services for others during the same time period. The worker did not advertise her services. She performed her services under the firm's name. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The firm stated that the parties mutually ended the work relationship.

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## Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, although the firm relied upon the worker's prior training and experience to perform her services, she was still required to follow the firm's expectations and final clean checklist. 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. The firm was responsible for resolving any problems or complaints that may have occurred, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure its customers' satisfaction with the work. The firm required the worker to notify the firm upon each arrival and departure. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker furnished supplies and equipment. 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. The firm paid the worker on a piece-rate basis, and the risk of loss was absent. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. 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. The worker was not engaged in an independent enterprise, but rather the cleaning services performed by the worker were a necessary and integral part of the firm's cleaning business. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not make benefits available to the worker, both parties retained the right to terminate the work relationship without incurring liability or penalty, a factor indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.