

**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**

Information provided indicates the firm is a financial institution. The worker provided services as a janitor for tax years 2015, 2016, 2017 and 2018. The firm reported the income on Form 1099-MISC, stating her services were contracted and they paid her a set amount per month. The firm attached semi-monthly invoices submitted from the worker, however they also provided weekly employee time sheets, that coordinated with those invoices. Checks and payroll documents were issued to the worker, not the company. The firm's Vice President informed the worker what offices and duties to be performed. Instructions were given at the beginning of the employment relationship or when work needed improvement. Services were provided daily. The timesheets provided by the firm indicated services were performed Monday through Friday (with an occasional Saturday and Sunday). The hours would vary from two to five hours per day. Services were performed on firm premises. The worker was required to perform services personally. The worker indicated they provided the cleaning cart and supplies. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she did perform services for others. The firm indicated the worker was no longer able to fulfill the service commitment.

The worker indicated she was hired to provide custodial work for the firm. She cleaned at the firm's location from Monday through Friday, after closing. The firm provided the cleaning supplies. She had been instructed what and where to clean, given security codes and key for the doors to enter and exit the building. She had been required to perform services personally. The worker was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

-A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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.

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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.

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.

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. The firm provided copies of the employee time sheets, showing services were performed Monday through Friday, with occasional Saturday and Sunday hours. The worker was provided with security codes and keys for the building. The firm provided all cleaning supplies and equipment. Whether paid by the hour or a set promised amount per month, there is no indication of profit or loss opportunity on behalf of the worker. Although the firm provided invoices from the worker, they coincided with the timesheets submitted. No other information, documentation, state records have been found pertaining to that business. The firm issued checks and pay documents to the worker, not to the business.