

**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 a tractor sales and repair dealership and engaged the worker who was experienced to perform repair services originally on a probationary basis and then full time as an employee. The firm's service manager provided the worker with instructions on services and repairs needed to be performed. The worker received assignments through service tickets. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm to resolve problems or complaints the worker could not resolve. Verbal reports were provided by the worker on jobs performed. The worker performed services on a flexible as needed schedule at the firm's place of business. The firm required the worker to perform the services personally. The firm assigned another mechanic when substitutes or helpers were needed and the firm paid them.

The firm provided the space, equipment, materials, and supplies. The worker provided personal tools. The worker did not lease equipment or incur any on-going expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm carried workers' compensation insurance on the worker when the firm reclassified the worker to an employee. The worker could not suffer any economic loss and had no financial risk unless damages to parts occurred per the firm, the worker indicated not applicable to this issue. The firm determined the level of payment for products and services.

There were no signed employment contracts between the firm and worker. The worker did sign a Form W-9 and form W-4 per the firm. The firm provided the worker with employee benefits when the firm reclassified the worker to an employee. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm referred to the worker as a contractor and then an employee under the firm's business name to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

The firm issued the worker a Form 1099-MISC and then a Form W-2 for the same services. We appreciate the firm coming into compliance with federal employment tax laws.

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## Analysis

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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 on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no significant financial business investments and no control over profit and loss due to significant business capital outlays being made. 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 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 issue of a worker being liable for damages of products or equipment used to perform services would not be considered having control over profit and loss with regard to the services performed for firm's business operations. The firm paid the worker and the customers paid the firm. The firm determined the level of payment for products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There was a verbal working relationship agreement and per the firm the worker signed a Form W-9 then a Form W-4. Neither of these forms are contracts but rather forms to provided an employer with necessary worker's identifications under which to pay them. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous basis over several months under the firm's business name.

Both the firm and worker 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.

The firm reclassified the worker to an employee during the working relationship and the services remained substantially the same. We appreciate the firm coming into compliance with federal employment tax laws. Based on the information provided the worker was an employee under common law for the entire working relationship.