

**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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is a residential cleaning business and the worker was engaged to performing house cleaning services to the firm's clients. The firm states all cleaners that are hired are hired as subcontractors who choose their hours around their own separate houses they clean. The worker's duties included traveling to one or two houses a day depending on the day and her availability and perform simple cleaning tasks. The firm believes the worker was an independent contractor while performing services for them because she had her own house cleaning business that they neither profited from and in which she made her own hours. The firm reported the worker's 2018 earnings on a Form 1099-MISC.

The firm states they provided training to the worker but the worker was experienced in this line of work as she owned her own business. Assignments were given to the worker on a week to week basis and the firm would either send a group text message to their workers or send separate text messages to discuss the assignments. The firm states the worker determined how she completed her assignments. The firm states the worker was required to notify them if any problems or complaints arose as they were the business owner, but the worker would resolve those issues. The worker was required to personally perform her services in the firm's clients homes typically in the local vicinity of the worker's home. The firm states the worker would show up at the client's house individually or with one other worker. The firm states the worker's schedule was limited due to her availability around her other jobs. The firm states there were seldom any meetings but they would call a meeting if it were needed. The firm states they would hire any substitutes or helpers needed for their business.

The firm provided a bag to the worker for her convenience in performing her services and a vacuum cleaner if necessary. The firm states the worker would cover supplies if she ran out or the customers may require their vacuum to be used or other supplies used to clean. The firm states the worker provided expenses for cleaning supplies, gas, meals, travel expense or tolls and she provided her own vehicle. The firm reimbursed the worker for these expenses only on occasion. The clients paid the firm for services rendered by the worker and the firm states they paid the worker a fixed amount. The firm states the worker established the level of payment for the services provided

The worker was eligible for a Christmas bonus. The firm states the worker performed similar services for others. The firm states the worker was represented to their clients as a contractor however the worker performed her services under their business name as the clients were their clients. Either party could terminate the work relationship at any time without incurring a liability. The worker terminated the work relationship.

The worker had no responsibility for soliciting clients for the firm's business. The firm states the worker was aware that she would be a contractor not an employee of their business.

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## Analysis

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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, the worker was experienced in this line of work and did not require extensive training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of the firm rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the payer the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with some freedom of action as to when the worker performed her services due to her other jobs and her school schedule, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

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, if a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, there was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services she performed for the firm and offering those services to the public. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages her.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement) then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's 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.

Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.