

**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 worker initiated the request for a determination of her work status as a cleaner in 2018, for which she received Form 1099-MISC. The firm's business is described as regular and recurring housekeeping services (vacuuming, dusting, dishes, making the bed, taking the trash out, etc.). The worker submitted an application, resume, was interviewed, and had a background check.

The firm's response was signed by the owner. The firm's business is a service provider to its customers; they schedule independent contractors to provide services to 'our customers'. The worker provided cleaning services in the firm's customers' homes and businesses.

The worker indicated she was shadowing a manager during cleanings and also had cleaned the owner's house as a working/trial interview and was instructed as to the list of specific cleaning products to use. The job assignments came out every week. It was the firm that determined the methods by which the worker's services were performed, with the owner and a manager supervising and checking her work. Any problems or complaints encountered by the worker were directed to the firm's owner immediately with the owner and manager determining the resolution. The worker submitted weekly time sheet and daily/weekly progress/check-ins over the phone. The worker's services were rendered 15% of her time at the firm's premises and 85% at the customer locations. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that no training was provided; the customer's expectations for the job and rate of pay were explained at the time of scheduling the job assignment. The job assignments were recorded on an online scheduling mechanism utilized by the firm; and, at times the information was relayed via telephone or text and then updated on the calendar. The worker determined the methods by which she performed the services; and, any problems or complaints encountered by the worker were handled by the worker. The worker's services were rendered at customers' locations 100% of the time. The worker was required to perform the services personally; any additional personnel were hired and paid by the worker.

The worker stated the firm provided uniform, required materials/supply list, mop, microfiber rags, and a vacuum until the worker could afford one. The worker furnished a vehicle and purchased the required supplies and a bucket. According to the firm, the firm provided nothing. The worker furnished supplies as listed in the 'Contractor Supplies Needed Agreement'. This document states that listed supplies were required for EVERY job and if not, the manager had the right to refuse services and the worker would not be paid for that job. Both parties concur the worker did not lease equipment, space, or a facility, the firm paid the worker an hourly wage, and the customers paid the firm. They agree that the worker was at risk for a financial loss if there was damage to equipment and that the firm established the level of payment for services provided.

Both parties acknowledge there were no benefits available; however, the worker stated there was a possibility of bonuses. Either party could terminate the work relationship without incurring a liability or penalty. There was a non-compete agreement during the work arrangement and for a one-year period after work relationship ceased. The firm responded the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm stopped scheduling the worker.

The following were provided:

- Copy of the firm's dress code
- Manager Pay Scale Agreement: working solo rate, managing one to four people rate, all clients are contracted with the firm and the clients' needs and needs of the firm are first priority, responsibility for damages to the property; required to collect payment from client, etc.
- Required Supplies/Use Agreement: Required to have all the required supplies used by the firm (managers permitted to and will inspect work as well as the contents of supply caddy ( cleaner can be sent home without pay if not all the required supplies are in the caddy)
- Non-compete agreement and non solicitation of customers, employees/contractors
- Sheets of work/jobs/customer and pay rate

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## Analysis

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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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

## 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, and not an independent contractor operating a trade or business.