

## 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 third-party administrator focusing on claim processing and administration that engaged the worker as an office cleaner from 2018 through 2019.

The firm instructed the worker on the work to be done. Both parties stated that the worker determines the methods by which the services were performed. If there are any problems or complaints with the worker's services, they are elevated and resolved by the firm. The firm stated that the worker's schedule was 10 hours, bi-weekly, 2 evenings per week. The worker stated they worked 2 to 3 days a week, at the firm's premises and was responsible for dusting and cleaning the office and restrooms. The worker was required to perform the services personally.

They both agree that the firm provided the worker with the supplies and equipment needed to complete their services. The worker did not lease any equipment or facilities, nor did they incur any expenses in their performance of services to the firm. The worker was compensated on an hourly basis.

There was no written contract describing the terms and conditions of the relationship. The worker indicates she did perform the same or similar services for others. However, the worker did not advertise, and did not maintain a business listing or a business office. The worker stated they completed an application for the job. The firm explained the job was obtained through a referral. Either party could terminate the relationship at anytime without incurring a liability.

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## Analysis

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After analysis of the common law factors as they related to this case, we find that the firm exercised sufficient control over the worker to establish the existence of an employer-employee relationship.

In the instant case, the firm's assertion is that the worker was an independent contractor because they are a temp/part-time worker. However, it should be noted that temporary or part-time status in itself does not determine worker status; it is the actual working relationship between the parties.

The firm maintained the right to direct and control the worker, which is an indication of behavioral control. 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. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary.

The firm provided the supplies and equipment, and paid the worker an hourly wage, which is an indication of financial control. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship.

In providing their services to the firm, the worker did not assume any business risk that would have earned him a profit or occasioned them a loss. Although the worker provided their services for others, 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. There was no contract, no business risk for the worker, and either party could terminate the relationship at anytime; indicating the relationship of the parties was employer-employee.

Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.