

**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 his work status as an automotive technician in tax years 2017 and 2018, for which he received Form 1099-MISC. He replaced and repaired parts, test drove vehicles, delivered vehicles to customer's home or work location, shuttled customers, cleaned the shop, drove the owner's daughter to work, stacked wood, and other manual labors. The firm's business is described as an automotive shop.

The firm's response, signed by the owner, identified the firm as auto repair and service business; and, the worker provided services as a mechanic.

The worker indicated he was given instructions as to repairs, shop procedures, and the order in which cars were worked on. The job assignments were given verbally; there was no written work order. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered from 8am to 5pm and sometimes later, at the firm's business location, road tests, customer drop-offs, and at the owner's home. The worker was not required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that no training and/or instructions were given; the worker had gone to trade school and had worked at a dealership for years. The worker would arrive in the morning, choose from what the firm had available for work that he was capable of doing, and leave when he was done; and, it was the worker that determined the methods by which he performed the services. The worker directed any problems or complaints to the firm for resolution. The worker performed the services at the firm's business location. The worker was required to perform the services personally.

The firm and worker acknowledged that the firm provided the facility/shop, lifts, parts for repairs, hand and power tools, diagnostic programs, and uniforms. The worker also furnished power and hand tools. The worker did not lease equipment, space, or a facility. The worker stated the firm paid him an hourly wage; however, the firm indicated the worker was paid commission, piecework, and paid per job and rounded off. (It should be noted that an attempt was made to contact the firm as to the method of payment, but without success.) The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker's risk for a financial loss in this work relationship would be the loss or damage to his tools. The firm established the level of payment for services provided or products sold.

Both parties concur there were no benefits extended to the worker; although the worker stated there were occasional bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm and worker agree the worker's services were performed under the firm's name.

---

## Analysis

---

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 continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

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.

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. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 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.

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

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.

Please see [www.irs.gov](http://www.irs.gov) for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.