

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Custodial Worker

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 did not specify any training that was provided by the firm and her instructions were to continue the services she had provided to the previous owners. The firm responded that the worker received no training or instruction from them. The firm stated the worker did not receive work assignments from them but that she provided janitorial services for the firm, without supervision, however the worker responded that she followed her regular assignments to clean the offices on Saturday's using the firm's pin code to access the offices, the worker added that she was able to work at any time if the job was completed. The worker stated she knew what methods these assignments were to be performed and completed them accordingly. The parties agreed if a problem or complaint were to arise, the worker was to contact the firm's office manager for resolution. The firm stated the worker did not have a daily schedule, however the worker responded that she was to clean each office on Saturday's and was instructed to empty garbage cans, these services was provided at the firm's premises taking 2-3 hours each day. The worker performed these services personally. The firm stated if substitutes or helpers were needed the worker was responsible for hiring and paying them. The firm stated they provided the worker with some cleaning supplies and that the worker herself also provided some additional supplies. Alternatively, the worker stated all cleaning supplies and equipment came from the firm's office manager and she provided nothing of her own. The firm stated the worker received a monthly amount of 960.00 per month for her janitorial services, the worker responded that she received a lump sum. The parties both agreed the worker would not incur an economic loss or financial risk in her relationship with the firm, other than a normal loss of salary. The firm stated that the worker had nothing to do with the firm's establishment of their level of payment for services provided, however the worker responded that she did not set the level of payment for these services, but that the firm did. There were no benefits available to the worker. They both agreed that the relationship could be terminated without incurring a liability or penalty. The worker stated there was no agreement between the parties prohibiting competition between the parties. There was mutual agreement that the worker did not advertise. The firm stated the worker had no interaction with their customers therefore was not represented in any way. The parties agreed that the relationship ended when the worker quit.

Analysis

Often because of the nature of the occupation it is not necessary that the worker receive extensive training, instructions or close supervision, the control factor is present if the person or persons for whom the services are performed retain the right to do so. Although the worker may not have been supervised directly while performing her services, this is not enough to characterize his relationship as a contract worker. The fact that the worker was not closely monitored would not carry enough 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 worker performed personal services on a continuous basis. The worker did not have a have significant financial investment in materials. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise her services. This is a strong indicator that the worker is not an independent contractor. 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 because of the services provided.