

## SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.112 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the business of refurbishing, servicing, selling diesel trucks, and driving for agriculture during wheat harvest season. The worker provided his services to the firm in 2014 and 2015 with services which included mechanical repair, truck servicing, driving during wheat season, and received the Form 1099-MISC in 2015 for these services.

The firm stated that the worker was given instruction as needed for the job. The worker received his assignments from the firm via text, phone call or in person, and the firm determined the methods by which the assignments were performed. The worker stated that if problems or complaints arose he was required to contact the firm who was responsible for problem resolution. The firm maintains that the worker was responsible for problem resolution unless it involved problems with the firm's equipment. The firm explained that they required the worker submit a list of what he did to the trucks, as well as daily log books when he drove the trucks. The worker had a set schedule beginning his day at 8:00AM and finished his day between 6:00PM and 8:00PM on most days. The firm contends that the workers schedule varied; he kept his own hours. He provided his services personally on the firm's premises and the firm's customers' locations' during harvest. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services; such as the truck. The firm expressed that the worker provided his tools. The worker reported that he did not lease any equipment nor were any business incurred in the performance of his services. The worker received a salary for his services, and was paid hourly for his overtime. The firm indicated that the worker was paid by the job. The firm's customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm stated that they established the level of payment for the services the worker provided.

The worker did not perform similar services to others during the same time period. He provided his services under the firm's business name. In fact, the firm required the worker to wear a company shirt and hat. Both parties retained the right to terminate the relationship without incurring liability.

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## Analysis

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The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of his services. 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. 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. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered his services personally. 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 worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. 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. His pay was based on salary and an hourly rate. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. 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. Either the firm or the worker could terminate the agreement. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.