Form **14430-A** (July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Public Services/Safety/Security	☒ 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 is seeking a determination of worker classification for services performed for the firm as a custodian and maintenance assistant from July 2019 until August 2024. The worker filed a Form SS-8 because they believe that they were misclassified by the firm as an independent contractor and that they erroneously received a 1099-NEC from the firm.

The worker believes that they were an employee of the firm because they performed core operational job duties under church supervision that were similar conditions to employee status. The worker provided a detailed written explanation of the work relationship between the parties as well as an agreement between the parties regarding the worker's job expectations.

The firm states that they are a religious organization. The worker provided services for the firm as a janitor, responsible for cleaning and trash removal for the church, office, and classrooms. The firm classified the worker as an independent contractor because there was no training required, duties were performed weekly at the worker's discretion, there was no oversight, and tools and supplies were provided by both the church and the worker. The verbal agreement between the parties detailed the frequency and nature of job duties for each building. There were no written agreements between the parties.

The firm states that there was no training provided to the worker, and that weekly cleaning was agreed by both parties. Special projects were instructed to the worker as needed. The maintenance contractor provided job assignments to the worker in person and determined the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact the maintenance contractor for problem resolution. There were no reports required of the worker. Services were performed weekly at the firm's premises. There were no meetings required of the worker. The firm did not require the worker to personally perform services. The worker could hire helpers or substitutes with approval from the firm but would not be responsible for their payment. The worker states that the firm provided them with a brief overview of what needed to be cleaned and the available supplies and tools. The pastor, the ministry superintendent, and other ministry leaders provided job assignments to the worker in person, by email, and through text messages. The firm determined the methods by which job duties were performed. If the worker encountered any problems or complaints, they were required to contact either the pastor or the maintenance superintendent for problem resolution. Services were scheduled around the schedule of church services and events and performed at the firm's premises. The firm required the worker to attend church services, and per the contract the firm established in 2024 between the parties, this was a condition of the work relationship. The firm required the worker to personally perform services. The worker could not hire helpers or substitutes and was not responsible for their payment.

The firm states that they provided cleaning supplies and equipment, and the worker provided equipment if needed. The worker did not lease any space, facilities, or equipment. The worker did not incur any job-related expenses. The firm reimbursed the worker on an as-needed basis immediately and in full as requests were submitted. Customers paid the firm. The firm paid the worker a lump sum with no access to advance pay. The firm carried worker's compensation insurance on the worker. The worker had no exposure to financial risk or loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided all cleaning supplies and appliances. The worker did not provide or lease anything and had no job-related expenses. The firm paid the worker a weekly wage on a monthly basis. The worker did not incur any job-related financial risk or loss while working for the firm.

The firm states that there were no benefits provided to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms or advertise their services to the public. There were no non-compete agreements in place between the parties. Services were performed under the worker's name, and the firm did not represent the worker to customers. The worker quit and ended the work relationship. The worker states that they did not perform similar services for other firms during the terms of the work relationship. Services were performed under the firm's name. The firm terminated the worker, ending the work relationship.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm’s business operation as a church. The firm provided work assignments by virtue of the firm's cleaning and maintenance needs, provided a detailed list of job responsibilities, and assumed responsibility for problem resolution. The firm's letter to the worker indicating job expectations, requiring the worker to attend church services, and reinforcing the fact that the worker had a supervisor in the performance of their job duties is additionally indicative of strong behavioral control by the firm over the worker. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. As stated by both parties, the worker did not have a financial risk or incur any job-related expenses that were unreimbursed. Based on the weekly rate pay arrangement the worker could not realize a profit or incur a loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient’s regular business activities. 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.