

**SS-8 Determination—Determination for Public Inspection**

Occupation

03PVW Construction/Trades/Technical Services

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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a full-service restaurant who also caters events and the worker was engaged for one day to take photographs for a catering event held at the firm's location. The firm believes the worker was an independent contractor because she had been treated as an independent contractor on a previous event they had catered, as she entered into a written contract with them regarding the terms and release of her photographic product, she provided her own equipment, and she invoiced them for the services rendered. The firm reported the worker's earnings on a Form 1099-MISC.

The firm did not provide the worker with any training or instructions. The worker states she received her assignment from a friend, who worked for the firm at that time, who asked her to help with the photography services. The worker states she was required to personally perform her services at the firm's location. The worker states the firm did not determine how the worker performed her services and they had no control over her services. The worker did not submit reports to the firm and she was not required to attend meetings. The worker had no daily routine and no scheduled hours in which to work. The worker was contracted to take photographs on a specific day for a specific event. Once that day and event had passed, there was no expectation that her services would be requested again.

The worker states she incurred expenses for a camera and flashes in order to perform her services. The worker was paid a lump sum for her services and she states she could incur a loss due to the loss or damage to her equipment. The worker states she established the level of payment for the services provided.

The worker owned her own photography business from March 2007 through May 2015 as evidenced by internet research. The worker issued two invoices to the firm for her services in February 2015; one for services rendered and one for prints that were made at the event. These invoices reflected the worker's business name as well as business email address. Either party could terminate the work relationship at any time without either party incurring a liability. The worker states there was no formal relationship with the firm.

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## Analysis

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As in this case and in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The worker provided her services on behalf of and under an entity of her own. The worker was responsible for the quality of the work performed and for the satisfaction of their client, the firm. The worker retained the right to direct and control her services in order to protect her financial investment and her relationship with her client, the firm.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker invested capital or assumed business risks, and therefore, he had the opportunity to realize a profit or incur a loss as a result of the services provided. The worker provided all equipment, supplies, and materials in order to perform her services. She invoiced the firm on stationery from a former business she owned for services rendered as well for additional prints that were printed. The worker was paid a lump sum for her services and once the one-time event ended, the relationship ended. There was no guarantee for future services.

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 engaged in an independent enterprise. The worker did have a photography business which she states was no longer in operation in 2015 when services were rendered for the firm. However, the worker's services were separate and distinct from the firm business and her services were not integral to the operation of the firm's business.

Based on the above analysis, we conclude that the firm did not exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, but found that an independent contractor relationship existed.