

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

## Occupation

03PVW Photography/Video 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**

Information provided indicated the firm is a film production company. The worker performed services on one project as 1st cameraman on a production in 2017, to assist his manager with the camera equipment. The firm indicated the worker was hired as a contractor and provided a copy of the W-9, I-9 and Crew Deal Memo, which the firm indicated classified him as a contractor. Work assignments were given via e-mail. The worker's manager determined how the work was performed. The firm indicated the worker assisted his manager, the Director of Photography, with the camera equipment on an as needed basis. Services were performed at locations as times varied day by day. He was to perform the services personally. The firm indicated the Director of Photography hired help if needed. The firm paid them. The firm indicated it provided the camera equipment. The worker was paid a negotiated wage of Two hundred dollars for a twelve hour day. Either party could terminate the work relationship without incurring a penalty or liability.

The worker filed the request for a work classification determination, as he feels he is an employee, as the firm had control over the hours of work, and location of work. The crew was given a call sheet, (copy provided) as to the schedule of the shoot. The Producer and Director, determined how the work assignment was performed. The hours were different every day, determined by the call sheet, cleaning camera equipment, building camera equipment, keeping it powered on and ready to record, keeping the picture in focus, breaking down the camera equipment to store at the end of the work day. He indicated five to six days a week for three weeks, twelve hours per day. Service were performed at the camera rental house five percent of the time and at the studio/various locations the rest of the time. He was required to perform his services personally. The worker agreed the firm provided all camera equipment. He did not lease anything. He indicated he was paid by the hour. The customer paid the firm. Either party could terminate without incurring a penalty or liability. He did not perform similar services for others during this time period. He indicated the job completed.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. Therefore, your 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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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. Payment by the hour, week, or month generally points to an employer-employee relationship. 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.

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## Analysis

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We have applied the above law to the information submitted. As is the case 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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 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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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 worker was required to be on set at specific times throughout the filming schedule. The firm provided all the equipment and supplies, therefore the worker had no financial investment in the services performed. Whether paid a set amount or by the hour, he was not in a position to incur a profit, he was simply paid for the hours worked, plus overtime.