

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

Occupation

03TEC Technicians

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 firm is in the business of installing and servicing satellite equipment. The worker was a satellite installer. He received a Form 1099-MISC for his services in 2017. There was no written agreement.

Both the firm and the worker agreed that the worker received hands on training from another tech on how to begin, complete, and service the equipment in 2016. He was tested by the firm for certification as well as drug tested in 2016; he then received his first route. The firm indicated that the worker received his work assignments via email; the worker noted that he received the customer list and appointments through a mobile app. Each party indicated that the other determined the methods by which the assignments were performed and would be responsible if any issues or problems arose. The firm indicated that the worker had no set schedule and that he worked when he wanted too. However, the worker noted he received his work schedule daily; there were time constraints based on the installation job. He would call the dispatcher upon the job completion. Both parties agreed that he worked at customers' locations. The firm indicated that there was a quarterly inventory accounting. The worker was to provide the services personally as evidenced by his badge identifying the worker and the firm. Each party indicated that the other would hire and pay any substitute workers.

The firm provided the dishes, receivers, and switches. According to the worker, he was also provided with an Aim Meter which he was making payments on. The worker picked up cable, fittings and gas that apparently were assessed against the worker's invoice. The worker provided the tools. The worker was paid piece work (a flat rate) with pricing determined by the firm. Both parties agreed that the worker could incur economic losses. Apparently, the customer paid the worker directly for any extra services, such as installation of a post but not for the installation and service of the satellite system. Each party indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm disagreed. The firm noted that the worker terminated the 'contract' yet no contract was provided. The relationship ended when the worker quit.

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## Analysis

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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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was initially trained by another worker. He was tested and received certification from the firm; then he was given a route, and provided with customers' appointments for satellite installation and services. While the worker's schedule may have varied, 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 which would have been the case as the firm scheduled the appointments. In addition, if a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. The worker was to provide the services personally as evidenced by the identification badge and testing/certification by the firm. 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. Hence, the firm ensured he was trained properly and tested before dispatching him to perform services under the name of the firm. The worker provided his services on a continuous basis throughout the time period involved. 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.

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. While he could make more or less dependent on how much work he performed, he had no significant investment. 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. The worker issued invoices every two weeks, based on job pricing set by the firm who applied job supply deductions before issuing the worker his compensation.

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. There were no benefits and there was no written agreement. While a written agreement would not be determinative of the work relationship, it would have addressed the intent of the work relationship. In this case, the worker was engaged as a satellite installer for the firm's business of providing TV satellite installation and services. When doing so, the worker was not engaged in an separate business venture. He did not hold himself out to the public to perform similar services for others, advertise or maintain a business location. Instead his services were integral to the firm's continuing operations. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.