

## 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 a single member limited liability company in the business to resell and repair cellphone. The firm engaged the worker as a cellphone technician to repair cell phones. There was no written agreement between the two parties.

The worker received no training as he had performed this type of service for the previous owner. The worker's assignments was dependent upon the firm's customer basis and needs. The worker stated the firm determined how the assignments should be performed and the firm stated the worker determined how the assignments should be performed. The worker relied upon the firm to resolve his problems and complaints. The worker's schedule was dependent upon the firm's customers' needs. The worker's services were performed at the firm's location. The firm stated the worker was required to perform his services personally.

The firm provided the location and large equipment the worker needed to perform his services. The worker provided his own personal hand tools. The worker did not lease any space. The worker stated he was paid hourly and the firm stated the worker was paid by the services done. The customers paid the firm directly for the services they received. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker's was paid as an employee for the previous owner of the Kiosk. The worker stated he did not perform similar services for others. The worker repaired the item given to him by the firm and then returned it to the firm. The worker terminated his services.

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## Analysis

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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.

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. In the instant case, the worker performed cellphone repair services for the firm's cellphone repair kiosk which demonstrated the worker's services were integrated into the firm's daily operations.

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 the instant case, the worker was kept by the firm in his same position to repair cellphones according to the firm's customers needs.

Payment by the hour, 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 the instant case, the worker was paid by the amount set by the firm which showed financial control over the worker's services.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. In the instant case, the worker could not suffer a significant loss as operating their own business. The worker did not provide the location or large equipment he needed to use to perform his services which demonstrated the worker did not have a significant investment in the services he performed for the firm. The fact the worker provided his own personal hand tools is a common practice in this industry and does not indicate the worker was self-employed.

The information provided by both parties showed the worker was an employee according to common law. The firm acquired the business from another firm and the worker's services did not change from the time he was performing services for the previous owner as an employee. The worker was required to perform his services personally which demonstrated the firm was interested in the methods used as well as the end result. The worker relied upon the firm as an employer to resolve his problems and complaints. It was the firm that had the financial investment as the firm provided the worker with the location and large equipment the worker needed to perform his services. The fact the customers paid the firm directly for the services they received demonstrated it was the firm that had the potential to suffer a significant loss for lack of payment for the services provided to the customers. The worker was a repair technician at the firm's location that provided resale and repair of cellphones to their customers. This demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341  
Worker: Notice 989