

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

Occupation

03 Construction/Technical Services &amp; Trades

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 an interior and exterior painting and repair business and the worker was engaged in 2015 as a painter. The worker received verbal assignments and the firm states they determined how the worker performed his services. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker's routine was to work the hours as needed to complete the job which averaged 40 hours per week. The worker performed his services 100% of the time at the firm's clients' location. The worker was not required to submit reports or attend meetings. The firm states they were responsible for the hiring and paying of substitutes or helpers.

The firm provided all equipment, supplies, and materials to the worker in order to perform his services. The worker did not incur expenses and the clients paid the firm for services rendered by the worker. The worker did not have an opportunity to incur a loss as a result of his services. The firm reported the worker's earnings on 1099-MISC and on a Form W-2 through a payroll company.

The firm states the worker was eligible for personal leave. The firm states the worker was represented as a contractor and employee of their company. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship.

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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 need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients. These factors gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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.

A worker who can realize a profit or incur a loss as a result of his services, is generally an independent contractor, but the worker who cannot is an employee. Because the worker in this case did not have a financial investment in a business related to the performance of his services, he did not assume the risk of realizing a profit or incurring a loss. The risk that a worker will not receive payment for services rendered does not constitute sufficient economic risk to support treatment as an independent contractor.

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.

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.

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