

SS-8 Determination—Determination for Public InspectionOccupation
03TRA LaborerDetermination:
☒ 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 masonry business. The firm engaged the worker to perform masonry laborer services for the firm's business. A verbal working relationship agreement was entered into. The firm provided the worker with job specific training and instructions. The project manager assigned the worker services to perform and determined the methods to use to perform the services. The firm required the worker to contact the project manager regarding any problems or complaints for resolution. Verbal reports were provided to the firm regarding job statuses. The firm determined the work schedules based on job requirements. The worker performed the services at the firm's customers job sites. The firm required the worker to attend safety meeting. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not provide anything or incur any business expenses. The worker did not lease anything. The firm paid the worker an hourly wage and the customers paid the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed.

There were no written contracts between the firm and worker. The firm did not provide the worker with any benefits. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The firm referred to the worker as a team member of the firm's business. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on going significant business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm. The firm provided everything the worker needed in order to perform the services. The firm had control over the costs with regard to performance of the services as well as what the customers paid for the end results. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. A verbal working relationship was entered into at the beginning of the working relationship. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for the firm's business. The worker did not advertise as a business to the public. The firm referred to the worker as a team member of the firm's business to the firm's customers.

Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.