

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

Information provided indicated the firm is a small remodeling and residential construction business that started in October of 2016. The firm indicated at first the business operated treating no one as employees since the jobs were not steady. It was not until the middle of 2017 that it was possible to hire regular employees. That was the main reason at the end of the year 1099 and W-2 documents were issued. The firm indicated the worker was a helper, performing different tasks as assigned by the owner. The firm provided safety training how to use tools. The firm stated he was always working with the general contractor as a helper. The firm indicated he started work at eight am. Work was performed at the construction site. The worker was to perform his services personally. The firm indicated they provided the tools. He was paid on salary as well as hourly. The customer paid the firm. The firm did carry workmen's compensation insurance. the firm indicated he was given paid vacations and Paid holidays. Either party could terminate the work relationship without incurring a penalty or liability.

The worker fled he was an employee as he wages never varied per job and he was compensated hourly. He was provided on the job training for new skills or tasks but no formal training period. Work assignments were given each day or the night before via phone call or text from the firm. He started work by eight am., he had a thirty minute lunch and wrapped up at four-thirty pm. Services were performed at the client locations. Informal meetings were held, but not mandatory. The worker indicated the firm provided all to most tools and materials for the jobs. He also provided some tools if available. He was paid by the hour. He agreed the customer paid the firm. He indicated he was given personal days and bonuses as well. either party could terminate the work relationship without incurring a penalty or liability. He was represented as an employee under the firm's business name. As of March 2018 the worker indicated he was still employed by the firm.

**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.

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## Analysis

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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.

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 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 for all services performed, and not an independent contractor operating a trade or business. The fact the firm had not set up a valid payroll system, does not make the workers independent contractors. The firm still hired, trained and instructed them what to do, when to do it and how to do it. The worker whether working on a part time, intermittent basis or full time basis, did not own his company while providing those services. Throughout the work relationship all work was obtained, and assigned by the firm, proving they maintained direction and control during the entire work relationship, not just after business picked up. The firm provided all equipment and materials and the worker was paid by the hour. Indicating the worker had no business or financial investment in the work performed.