

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

## Occupation

03TRA Electrician Apprentice

## 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 worker initiated the request for a determination of her work status as a house cleaner in tax year 2018, for which she received Form 1099-MISC. The firm's business is described as a cleaning service.

The firm's response was signed by the director. The firm's business is described as a marketplace for the consumer to get access to cleaning professionals. The consumers access the firm's website and book a time slot for a cleaner's arrival and the services they are requesting. The firm indicated the business focus was changed in 2019; the firm now employs 15 staff members with W-2 agreements. The worker provided services as a cleaner in 2018. The firm provided a copy of the Service Professional Agreement.

The worker stated she was given specific training and instructions for two days and since the firm thought she did a good job, she then worked unsupervised. The worker obtained her job assignments via a text message through an Amazon app. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered 10am to 6pm, three days a week with maximum of 2 hours per residence depending on what the customer chose online. The customer would tell the firm where the key was or the security code needed, if client was not going to be there and the firm provided information to worker. After cleaning the customer's residence she would notify the firm and go to the next location to clean. The worker was not required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm provided instructions of the customer's address, phone number, and type of service requested. The job assignments were given verbally. The customer determined what they wanted cleaned. The customer paid the firm a booking fee; when the room(s) were cleaned, payment was made through the Amazon platform and payment was generated to the worker within two weeks; the worker would be paid the price for cleaning. The cleaner and customer determined the methods by which the worker's services were performed. The worker would contact the firm with any issues and the firm would mediate between the customer and the worker. The worker's services were rendered after she arrived at the office, accepted the job(s), and completed the jobs at the customers' home. The firm stated the worker was not required to perform the services personally; the worker could hire and pay for helpers or substitutes and the firm's approval was not required.

The worker indicated in a conversation that the firm provided some rags and plastic bottles. The worker furnished a traveling vacuum (which she had purchased from the firm and it was deducted from her pay), sponges, rags, and bathroom cleaner. The worker did not lease equipment, space, or a facility. She was not sure how the firm calculated her pay and stated she asked repeatedly for an explanation (a large apartment could require two people to clean and each would get \$X or she could clean a small apartment by herself and get \$X. She did not establish the level of payment for services provided; she needed a job and this seemed like a promising opportunity.

According to the firm, nothing was provided to the worker. The worker furnished cleaning equipment, cleaning chemicals, and safety equipment. The worker incurred expenses for travel, equipment, and supplies, phone and data, and liability for damages. The worker was paid a lump sum; customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker could be at risk for a financial loss in this work relationship for damages to property and loss/theft of customer's property. The worker did not establish level of payment for services provided the customer did; the customer chose the services they wanted.

The firm and the worker confirm there were no benefits extended to the worker and either party could terminate the work relationship without incurring a liability or penalty. The firm stated the worker was providing same or similar services for others. The worker stated she was not performing same or similar services for others; this was her first and last cleaning job.

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## Analysis

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A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's 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 considered the information provided by both parties and have applied the above law to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 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.

## CONCLUSION

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.