

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

Occupation

04MAN Office Manager

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 water recreational provider business who engaged the worker to perform business management and coaching services for the firm's business operation. The worker had performed services for the firm in prior years. In 2017 the worker believed the firm would be issuing a W-2 for the engagement of worker's services at a set amount per the season under a verbal agreement. The worker booked tours and lessons at customers requests and performed the required services accordingly. The worker had experience so no formal training was needed. The worker's schedule was based on client bookings. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker provided the firm with customer payment and feedback reports. The worker performed services at the firm's place of business and from home. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the business, equipment, materials, and supplies needed to perform the services. The worker provided a cell phone and I pad. The worker did not lease equipment or incur any business expenses. The firm paid the worker a salary and the customers paid the firm and worker. If they paid the worker the entire amount was required to be turned over to the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for products and services.

There were no contracts but a verbal working relationship was entered into. No benefits were provided by the firm to the worker. The worker did not perform similar services for others. The worker advertised the firm's business through various venues. The firm referred to the worker as a partner per the firm and per the worker a coach. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm issued the worker a Form 1099-MISC for a portion of the agreed upon salary indicated in the verbal working relationship agreement and the worker entered a complaint with the Department of Labor for unpaid wages as was determined to have been an employee for payment for the services.

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**Analysis**

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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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in the business. The worker 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 a salary on a weekly basis for performance of the services and the customers paid the firm or worker. If the worker was paid the entire amount was required to be turned over to the firm. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed written contracts between the firm and the worker. There was a verbal working relationship agreement entered into in 2017. The worker did not perform similar services for others. The worker advertised the firm's business through various venues. The firm referred to the worker as a partner under the firm's business name to the customers. Both parties 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.