

## SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Managers/Supervisors

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 an insurance sales business. The worker was engaged to perform services as the firm's business manager, whose duties included setting daily appointments, tracking leads, reviewing and submitting new business to the insurance carriers, and working files with issues. The firm treated the worker status as independent contractor.

The firm provided the worker with daily tasks, and a phone script for use in setting daily appointments. Work assignments were received via text, email, and phone. The worker performed her service personally, from her residence. Work methods were determined by the firm and worker. Problems that the worker could not resolve were reported to the firm for resolution. The worker was required to provide the firm with email notes on files with issues, incoming calls, and scheduled appointments.

The firm provided the worker with a cell phone, postage and envelopes, and the worker provided the office supplies, equipment, and computer needed to perform her services. The worker incurred expenses for the items she provided. The firm reimbursed for postage and cell phone expenses. The firm paid the worker on an hourly wage basis for her services. The worker did not incur economic loss or financial risks related to her services.

The worker was not covered under workers' compensation insurance. Employment benefits (paid vacations, paid sick time) were made available to the worker. The worker did not perform similar services for others, and did not advertise her services to the public. The work relationship was continuous, could have been terminated by either party at any time without incurring liabilities.

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**Analysis**

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, and routine in the performance of her services. The worker used equipment, tools, and supplies provided by herself, and the firm. She represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)