

**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 worker initiated the request for a determination of her work status as an office/finance manager in tax years 2017 through 2019, for which she received Form 1099-MISC. In this capacity, she located vehicles on auctions to buy, worked with lenders/customers for vehicle financing, closed most vehicle sales, finalized and submitted all paperwork to lenders and the State DMV, accounts payable, accounts receivable, inventory, ordered parts, and picked vehicles from auctions, etc. The firm's business is described as a used car dealership, buy here/pay here, international shipping of vehicles from [REDACTED] to [REDACTED], vehicle purchasing, financing, real estate transactions, and a mechanic's shop.

The firm's response, signed by the owner, indicates the firm's business is buying and selling retail and wholesale used vehicles. The worker provided services as an office manager and receptionist, obtaining loans for customers on sold used vehicles, establishing new hires on the payroll system, and preparing weekly payroll and submitting the information to [REDACTED] for check printing.

The worker stated that she received training and instructions and the job assignments from the firm's owner and the general manager. 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 at the firm's business location from 9 am to 5 pm, Monday through Friday. She stated there were occasions she came in early per the firm's request; if the firm's owner went to an auction in the morning she was required to come in earlier to view the auction on-line. She stated she was not compensated for this extra time. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, the worker was hired as an experienced office manager to execute the duties she was hired for. The worker determined the manner in which she performed the job tasks. She directed any problems or complaints to the firm to resolve. The worker's services were rendered on the firm's premises from 8:30 to 5:30 with a break for lunch. The worker was required to perform the services personally. Any additional personnel were hired by the worker with the firm's approval and the individuals were put on payroll and paid by the firm.

The firm and worker concur the firm provided all office and computer equipment; the worker also noted that the firm provided office supplies, a demo vehicle, all paperwork, Internet, worker's compensation, and she was listed as a driver on the firm's insurance. The parties agree the worker furnished nothing, did not lease equipment, space, or a facility, or incur expenses. The worker was paid a salary. The customers paid the firm. The worker was covered under the firm's workers' compensation insurance policy. Neither party answered as to whether the worker was/not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for the services provided or products sold, stating it was the responsibility of the firm. The firm indicated the lending institutions dictated the level of payment.

The parties acknowledge there were no health insurance, paid vacation, paid personal or sick days benefits extended to the worker; the firm noted she received paid holidays. The worker stated neither party could terminate the work relationship without incurring a liability or penalty; in this case she was not entitled to unemployment benefits. The worker was not performing same or similar services for others during the same time frame. The firm responded that the worker not allowed to sell vehicles or obtain financing for other automobile dealerships. The worker indicated she was referred to as the office manager to customers, lenders, vendors, the accounting firm, and the firm's owner's attorney. The firm and worker agree the firm terminated the worker.

The firm provided a printout of the payments issued to the worker every week or two over the course of the work arrangement.

---

## Analysis

---

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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.

We have considered the information provided by both parties 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

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.

Please see [www.irs.gov](http://www.irs.gov) for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.