

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

Occupation

Managers/Supervisors/Administrators

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 stated that the worker was skilled in accounting and no training or instruction was needed, however the worker replied that she received an outline of responsibilities, an employee handbook and new hire documents including medical enrollment forms. The parties generally agreed that the worker received her assignments from the CEO/Owner, the firm added these assignments were provided via telephone or personal meetings. The firm stated the worker determined the methods assignments were performed, however the worker disagreed and submitted an email from the firm stating she would report to the ownership team and take direction from the CEO. The parties agreed that the worker was required to contact the CEO if problems or complaints were to arise, for resolution. The firm stated no specific reports were required, however the worker responded that reports on reconciliation of accounts, AP and AR accounts, financial statements and PPP calculations were required. The firm responded that the worker did not have a daily routine, the worker replied that her daily routine was Monday-Friday from 9:00am -5:00pm. According to the firm these services were performed at the workers residence but did go into the office to pick up and drop off work, alternatively, the worker responded that she worked 100% of the time at the firm's premises, except for post travel restrictions due to COVID-19. The firm stated no meetings were required, the worker replied regular meetings were held with the CEO and staff meetings. The parties agreed, these services were performed personally by the worker. According to the firm, no substitutes or helpers were allowed as per their contract and added if this was needed, the worker was responsible for hiring and paying them. The worker responded that this type of hiring would be done by her or the CEO and the firm was responsible for paying them. According to the firm, they supplied the worker with a computer and security software and the worker supplied a printer, cell phone and alternate computer. The worker gave a differing response stating the firm supplied an office, computer, phone system, software, and supplies, she stated she supplied nothing. It was unknown by the firm what expenses the worker may have incurred, possibly gas and mobile phone expenses, none of which were reimbursed by the firm. The worker stated she received a salary and provided an email from the firm which included the salary offer and benefits that would be available to her. Alternatively, the firm stated she received periodic payments at the worker's request. The parties agreed that the customers paid the firm. The firm responded that the worker could not have incurred an economic loss or financial risk, the worker stated her financial risk was due to receiving a 1099 and loss of benefits. According to the firm, the worker established the level of payments for the services she provided but did not establish any company related level of payment, the worker provided a different response stating the CEO of the firm established the level of payment. The firm replied that no benefits were available to the worker. The worker submitted an email offering health benefits and 3 weeks of paid time off during the calendar year, additionally, the worker stated she had benefits of sick pay, holidays, and bonuses available to her. The firm stated the worker was performing similar services during the time entered in Part 1. Line 1, the worker stated she was not. The parties generally agreed that an agreement was in place, with a restrictive covenant regarding competition. The worker added that this was signed under duress of not being paid. According to the firm, the worker advertised her services by contacting them. The firm replied that the worker was represented to its customers as a contractor, the worker stated she was represented as a CFO/COO. The work relationship ended when, according to the firm, the agreement ended her services, however the worker stated she gave 2 weeks' notice and resigned.

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**Analysis**

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. Although the parties disagreed on who determined the methods in which the worker was to complete her assignments, it is believed that the worker may have developed her own methods, but the firm retained the right to change the worker's methods to protect its business interests. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. Although it was stated by the firm, reports were not required, it is reasonable to assume the clients could not be properly billed without the work orders. The worker did not assume a business of financial risk. A person who can realize a profit or suffer a loss because 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 work relationship could be terminated by either party without incurring a liability or penalty. The firm provided a copy of an independent contractor agreement believing that this should be a clear indication that the worker agreed that she was a contractor. However, Federal guidelines stipulate that this agreement in of itself cannot be considered in the SS-8 determination process, as we are obligated to base our decisions on the actual relationship between the parties, which is the controlling factor, and not the terms of the contract either oral or written. It is the firm's responsibility to treat workers according to federal employment tax guidelines and law. Neither the firm nor the worker has the right to decide whether the worker should be treated as either an independent contractor or an employee. Worker status is dictated by the characteristics of the work relationship. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee.