

## SS-8 Determination—Determination for Public Inspection

Occupation

04OPC Archaeological Observer

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 cultural resource management business consisting of archaeological investigations. The worker was engaged as the monitor, whose responsibility was to observe the firm's excavation and report to her tribe. The firm treated the worker status as independent contractor, and issued to her a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker was already trained on how to perform the services before being engaged by the firm to perform her services. The firm provided the worker with the location of the dig site, and the time to be there to perform her services. The firm required the worker to perform her services personally. Work methods were determined by the worker and the firm (archaeological field director). The worker was required to report problems and complaints to the director for resolution purposes.

The firm provided the equipment and tools needed to perform the digs, but no equipment, tools, or supplies were needed by the worker to perform her services. The worker incurred travel expenses to and from the dig site. She did not incur economic loss or financial risks related to her services. The firm paid the worker on an hourly wage basis for her services. Customers paid the firm for services rendered.

The firm covered the worker under workers' compensation insurance. No employment benefits were made available to the worker. The worker did not perform similar services for others, nor did she advertise as being available to perform similar services for others while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities, and ended when the job was completed.

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**Analysis**

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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, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm. The facts provided indicate that the firm retained the right to direct and control the worker to the extent necessary to protect its investments, 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)