

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

Occupation

Personal Service Providers

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 property management company. The firm engaged the worker as a pool monitor from 07/2020 to 9/2020. The worker's perspective is he should have been treated as an employee for federal tax purposes. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

According to the worker, he received instructions from the firm. He was shown how to open and close the pool, resident pool sign up procedures and guidelines on enforcing pool rules and COVID-19 policies. The worker would receive his work assignments either by email or the schedule was posted in the apartment complex managements office. Both parties agree the firm determined the methods by which the assignments were performed. The worker was required to contact the firm if any problems or complaints arose. He worked 3-4 days a week. He received two 15-minute breaks as well as a 30-minute lunch break while performing the services for the firm. The worker was not required to submit any reports. He performed the services on the firm's premises. The worker was not required to attend any meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. His services were an integral and necessary part of the services the firm provided to its customers. The firm stated the hiring and paying of substitutes was not applicable in this case.

The worker did not furnish any of the tools or equipment used in performing the services. The worker did not lease equipment. The worker did not incur any significant business expenses. The worker was paid an hourly wage. He was compensated time and a half pay for holidays. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the work relationship at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform the services for others. He did not advertise his to the public or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended at the end of the summer as the job was seasonal.

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## Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

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 fact that a worker performed her services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the firm's regular business activities. 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 payer's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.