

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

Occupation

05FIW Food Industry Workers

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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is a restaurant and the worker was engaged from June 2018 to August 2018 as a waitress. The firm believes the worker was an independent contractor while performing services for them because it was a summer job for only five (5) weeks. The firm reported the workers earnings on a Form 1099-MISC.

The firm states they provided no training to the worker in regard to her services. The worker worked the night shift and she was not required to submit reports to the firm or attend meetings. The worker was required to personally perform her services and the worker performed her services at the firm's premises. The firm states the hiring and paying of substitutes or helpers did not apply in this case.

The firm provided the restaurant and all equipment, supplies, and materials to the worker in order to perform her services. The worker did not incur any expenses and the firm compensated the worker at an hourly rate. The worker did not establish the level of payment for the services provided. The worker did not have an opportunity to incur a loss as a result of her services.

The worker was not eligible for employee benefits. The worker did not perform similar services and she did not advertise her services. The firm states they represented the worker to their clients as an employee. Either party could terminate the work relationship at any time without incurring a liability. The work relationship ended when the worker quit her services to go back to school.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was not experienced in this line of work and therefore, required initial training and instructions from the firm. The worker provided her services on behalf of the firm rather than an entity of her own. The payer was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the payer the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the worker only performed services on a short term basis, the firm's statement that the worker performed services for only five (5) weeks and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

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 service recipient'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 firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Based on the above analysis, 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.