

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

Occupation

05FIW.15 Food Industry Worker

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 country club solely devoting their business to golf. The worker provided her services to the firm as a bartender with services including; cleaning the bar, washed the glassware, mixed the drinks, and ordered the inventory in 2010 and received the Form 1099-MISC for these services.

The firm instructed the worker to do all the tasks the job required such as; when to arrive and depart work, what tasks needed to be accomplished, and how to accomplish those tasks. The worker received her assignments from the firm's manager and the firm's manager determined the methods by which the assignments were performed. If problems or complaints arose, the worker was required to contact the manager who was responsible for problem resolution. The firm required the worker to submit sales records on a daily basis. The worker's schedule varied, she received a weekly schedule of the shifts she was assigned; usually four to five days and/or evenings of six to eight hour shifts. She provided her services personally on the firms' premises. The firm required the worker to attend meetings to discuss job assignments before special events. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; all distilled alcohol, drink mixers, beer and wine, glassware, soap, aprons, uniforms, facilities, and bar equipment. The worker did not lease any equipment nor were any business expenses incurred in the performance of her services. She received an hourly wage for her services. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm established the level of payment for the services the worker provided.

The worker did not perform similar services for others during the same time period. She provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

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## Analysis

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The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of her services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. The worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered her services personally. 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. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Her pay was based on an hourly rate. 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. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. Either the firm or the worker could terminate the agreement. The relationship ended when the worker quit.

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.