

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

Occupation

05PRW Public Relations 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**

The worker initiated the request for a determination of her work status as an event coordinator in tax year 2017. In this capacity she would coordinate a visit with a prospective customer to explain the services offered by the firm at its venue location. The firm's business is described as an event venue, pumpkin patch, catering, weddings and private events, etc.

The firm's response was signed by the owner. The firm's business is a venue to host events, weddings, and fundraisers. The worker provided services to assist another worker with booking events, assisting brides with previously booked events and parties, and assist the customer with answering questions.

The worker indicated she was given specific training and instructions as to tours of the venue and instructions for miscellaneous projects. Her job assignments came from a supervisor. The firm determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were directed to the firm for resolution. The worker was required to submit a spreadsheet on appointment status and bookings and time cards. The worker's services were rendered 30% at her home answering phone calls and emails and 70% on firm's premises working in the office, working the Fall Festival setting up the store and ensuring the cashiers had money and etc., tours for wedding events, cleaning up for an event. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that there was no extensive training and instructions given; the worker shadowed another worker. Her job assignment was to perform the same job and increase revenue. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The firm concurred that the worker's services were rendered on the firm's premises, customer location, and the worker's home. The firm hired and paid for additional personnel; although the worker was allowed to call other workers to cover her duties.

The worker stated the firm provided her with office space, cellphone, files, and venue decor. The worker furnished nothing; and she did not lease equipment, space, or a facility. The worker was paid an hourly wage for some duties and a commission based on the cost of an event. The customers paid the firm. The worker was not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for services provided or products sold.

The firm concurred that a computer, cellphone, and desk were provided to the worker; but, added that the worker also furnished a printer, computer, and cellphone. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage and there was a possibility of a commission. The customers paid the firm. The firm responded that the worker was at risk for a financial loss in this work relationship – if she did not book an event she did not get paid. The firm indicated that the worker and firm established the level of payment for services provided or products sold.

Both parties agreed that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker performed services under the firm's business name. The worker was responsible for soliciting new customers and selling event services, with the prospective leads being provided by both parties.

Copies of spreadsheets that noted the time spent and the tasks, a list of checks issued, copies of time cards, the worker's job application, an At-Will Employment agreement and an Acknowledgment of Receipt of the firm's Employee Handbook (both unsigned as firm indicated worker refused to sign), and some email traffic were submitted.

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## Analysis

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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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

A person who can realize a profit or suffer a loss as a result 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 risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

## CONCLUSION

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.