

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

Occupation

07SWO Public Service/Safety/Security

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 county fire department that engaged the worker as an employee to perform fire captain and management services for the district as well as emergency wildfire services as needed under a mobilization agreement. The firm paid the worker a salary and hourly based on jobs being performed. The firm issued the worker a Form W-2 for the salary payments and a Form 1099-MISC for the hourly payments. The worker was a captain/engine boss for the district fire department and when working for other agencies he was under the direction and control of the project commander. The firm provided the worker with wildfire training. The commander of wildfires assigned the worker jobs to perform based on the needs of the agency and determined the methods used by the worker to perform the services. The worker contacted the wildfire commander regarding problems or complaints for resolution. The worker was required to provide various job reports when fighting wildfires. The wildfire commander determined the work schedule and location where the worker performed services. The worker attended meeting as needed. The worker performed the services personally. The on-site commander hired substitutes or helpers and they were paid by the agency wildfire responsible party.

The equipment needed was provided by the district agency or wildfire on site party and the worker provided personal items. The worker did not lease anything or incur any expenses. The wild fire agency reimbursed all worker expenses for lodging and food. The worker was paid an hourly wage according to the IAW agreement between the district local agency and state. The worker could not suffer any economic loss and had no financial risk.

There were no signed contracts between the firm and worker. The worker received residual benefits through the district agency. The worker did perform similar services for others while performing services for the wild fire state agency and was required to obtain prior approval per the firm to do so. The worker did not advertise as a business to the public. The firm referred to the worker as a district employee. The relationship ended when the worker resigned.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker as both an employee and independent contractor for fire fighting services. The worker did not have control over the cost related to providing services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. The worker did perform similar services as an employee for the district fire department. The fact that a worker may perform similar services for others would be an important factor to consider in an independent contractor relationship; however, this factor alone would not make the worker to be an independent contractor. Many workers work at more than one job at a time and may be employees in one or all of the working relationships depending on the autonomy of each one. The worker did not advertise to the public as being engaged in a fire fighting business but rather performed the services under the firm's district name for emergency situations as needed and available.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.