

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Janitor	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 business and engaged the worker through an application process to perform cleaning services for the firm's business operation. The firm assigned the worker services to perform based on the firm's customers requests. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker performed the services at the firm's customers job sites. The worker performed the services personally.

The firm provided all cleaning equipment and supplies. The worker provided nothing. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did no advertising to the public as being engaged in a business. The firm paid the worker as an employee and issued W-2's all years until 2017 but then changed the worker to an independent contractor and issued a Form 1099-MISC. under a different d/b/a but same EIN#. The services performed by the worker remained substantially the same.

Analysis

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

In this case you paid the worker as an employee for all years from 2013 through a portion of 2017 and then reclassified the worker to be an independent contractor without any change to the working relationship. The fact that the worker began working for another company you contracted with would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be employees in one or all working relationships depending on the autonomy of each one.

We have determined that the worker was an employee under common law for all services performed for your business operation based on the autonomy of the working relationship