

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

Occupation 04MAN Manager	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 worker initiated the request for a determination of his work status as a manager and appliance repair person in tax years 2013 through 2017. The firm's business is described as an appliance business.

The firm's response was signed by the owner/broker. The firm's business is described as property management services. The worker performed appliance repair services at the firm's shop or at the rental properties.

According to the firm, there was no specific training and instructions given to the worker. The worker's job assignments were given via phone or work order. It was the worker that 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 services were rendered 80% of the time at the firm's retail location and 20% at the firm-managed properties. The firm indicated the worker was required to perform the services personally. Any additional personnel were hired and paid by the worker; and, in those instances the price for repairs was more.

The worker responded that he was given specific training and instructions as to what to work on, cleaning units, cleaning the store, managing the store, and purchasing units. The worker's job assignments were disseminated via phone calls or visits from the firm's owner. The worker stated the firm determined the methods by which the worker's services were performed and that he was required to handle any problems or complaints. The worker's services were rendered 40 or more hours per week at the firm's retail/warehouse location. The worker was required to perform the services personally; any additional personnel were hired with the firm's approval and paid by the worker who was reimbursed by the firm.

The firm acknowledged that the firm provided the products to be fixed and some parts, if they had them available. The worker furnished his tools. The worker did not lease equipment, space, or a facility and did not incur expenses in the performance of the job except for tools, gas, and transportation. The worker was paid a fixed salary per week and was issued Form 1099-MISC to report his earnings from 2014-2017; there were no commissions generated on sales. The customers paid the worker. The worker was not covered under the firm's workers' compensation insurance policy. The firm indicated the worker established level of payment for services provided or products sold.

The worker stated the firm provided the necessary tools. He did not lease equipment, space, or a facility and did not incur expenses in the performance of the job. The worker responded that he was paid a salary and that the customers paid the firm. The worker was covered under the firm's workers' compensation insurance policy for three months. The firm established level of payment for services provided or products sold.

The firm indicated that no benefits were 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 put sales ads on Craigslist and other sites under his name and the firm's name. The worker fixed appliances on site at the firm-managed rental properties and at the shop.

The worker responded that the benefits available to him were paid vacations, paid holidays, and personal days. Either party could terminate the work relationship without incurring a liability or penalty. The worker concurred that ads were placed on Facebook, Craigslist, and a Trading Post and that he was not performing same or similar services for others during the same time frame.

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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.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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.

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.

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.