

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Cleaning Person

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, a cleaning/housekeeping attendant for Firm A*, a cleaning business, and its successor cleaning business, Firm B,* submitted separate but virtually identical forms SS-8 related to services he provided for Firm A and Firm B from 2014 to 2018. The Worker attached copies of forms 1099-MISC Firm A issued him for TY2016 and Firm B issued him for TY2016 and TY2017. The Worker believes he was Firm A's and Firm B's employee and should have been issued forms W-2.

Firm A and Firm B (referred to collectively as the Firm") submitted virtually identical forms SS-8 and attached copies of forms 1099-MISC it issued the Worker for tax years 2014, 2015, 2016, and 2017, along with a copy of an "Independent Contract Status Agreement" from 2014 showing the Worker's and Firm A's names. Research finds the Firm also issued the Worker a Form 1099-MISC for TY2018. The Firm believes the Worker was an independent contractor because "Mr. [Worker] performed cleaning and was making his own decision on supported sites and business hours." The parties agree the Worker didn't perform services for the Firm in any capacity before the services relevant to this determination.

*Firm A was essentially the same business operation as Firm B, with the same Principal but a different name and EIN. Research indicates Firm A began operating in place of Firm B in late 2016. The Worker performed the same cleaning assignments for Firm A as he had for Firm B. Because of the continuity of ownership and services provided, this determination encompasses both Firms' working relationships with the Worker.

BEHAVIORAL:

The parties generally agree on the following facts:

- The Worker received work assignments through the Firm's customer orders.
- The Firm required the Worker to contact the Firm if problems or complaints arose, and the Firm was responsible for the resolution of such issues.
- The Firm didn't require the Worker to provide reports.
- The Firm required the Worker to perform his assignments at Firm customer locations.
- The Firm required the Worker to personally provide services.

The Firm states it trained the Worker on safety and reporting hours; the Worker maintains he was also trained on making beds and dusting. The Firm states its customers determined the methods by which the Worker performed assignments; the Worker maintains the Firm determined those methods. As to the Worker's daily routine, the Firm states the Worker had his own schedule and hours, dependent on customers. The Worker states he worked from 9:30am to 6:30pm daily with lunch in the company cafeteria from 12:00-12:30pm, and was sent home early when work was slow. The Firm maintains it didn't require the Worker to attend meetings, while the Worker states he was required to attend occasional staff meetings.

FINANCIAL:

The parties generally agree on the following facts:

- The Worker didn't lease equipment, space, or a facility.
- The Firm paid the Worker an hourly wage.
- The Firm didn't allow the Worker a drawing account.
- The Firm's customers paid the Firm.
- The Firm didn't carry worker's compensation insurance on the Worker.
- The Firm established the level of payment for services provided.
- The Worker didn't incur economic loss or financial risk working for the Firm.

The Firm states neither it nor the Worker provided supplies, equipment, or material but that an unidentified other party provided "broom, vacuum cleaner, etc." The Firm states the Worker didn't incur any expenses in performing services for the Firm.

RELATIONSHIP OF THE WORKER AND FIRM:

The parties generally agree on the following facts:

- There weren't any non-compete agreements between them.
- The Worker wasn't a union member.
- The Worker didn't do any advertising.
- The Worker performed his job under the Firm's name.
- The Firm didn't make any benefits available to the Worker.
- Their working relationship could be terminated at any time without liability or penalty.
- The Worker didn't provide similar services for others during the relevant time period.
- Their working relationship ended when the Worker quit.

The Firm states it represented the Worker to its customers as "contractor," while the Worker states the Firm represented him to customers as "employee."

Analysis

The relationship of employer and employee generally exists when the person or entity the worker provides services on behalf of has the right to control and direct (1) what the worker does and (2) how the worker does it. It isn't necessary for the person or entity to actively direct or control the worker, only for it to have the right to do so.

It's very important for workers and those who hire workers to understand that if their circumstances and behavior indicate an employer-employee relationship exists, any oral or written agreement, contract, or understanding between the parties that says the worker is an independent contractor must be disregarded when we determine worker classification for federal employment tax purposes. In this context, under the required common law standard, the actual working relationship between the parties is what matters. IRC 31.3121(d)-1(c). That's why, in making this determination, we must disregard the Firm's 2014 "Independent Contract Status Agreement" – even though the Worker may have signed it and agreed to be classified as an independent contractor.

The Firm trained the Worker on safety and reporting hours and, as the Firm acknowledged, the Worker performed cleaning services under the Firm's business name. The Firm was ultimately responsible for the quality of the services performed by the Worker and for the satisfaction of the Firm's customers. This indicates the Firm had the right to direct and control what the Worker did and how he did it in order to ensure the Worker's conduct with customers was consistent with the Firm's business practices and procedures. In simplest terms, the Firm had the right to make sure the Worker did his job in a way that didn't get the Firm into trouble with its customers. Even the Firm's act of directing the Worker to follow customer instructions when at job sites was an exercise of the Firm's right to control how the Worker performs assignments: the Firm required that the method by which the Worker performed assignments was to be whatever method the Firm's customers wanted. The Firm's right to direct and control the Worker in this way, and to require the Worker to take instructions from Firm customers, points toward an employer-employee relationship.

Next, the integration of the Worker's services as a cleaner into the Firm's cleaning business generally points to the Worker being subject to the Firm's direction and control. The Firm was all about providing cleaning services to clients and the Firm hired the Worker to go to customer locations and do just that: clean. Customers paid the Firm for the Worker's services, and the Firm paid the Worker. These facts point to an employer-employee relationship.

The Firm required the Worker personally to provide services – he didn't have the right to just send in a substitute to perform his cleaning duties. The Worker was necessarily subject to a certain amount of Firm control because, as a cleaner, the Worker was performing a service that was integral to the Firm's business operations. How the Worker conducted himself and performed his assignments with customers could make or break the Firm's reputation, its standing with customers, and, ultimately, its business survival. These facts are highly indicative of an employer-employee relationship.

The Firm acknowledges the Worker didn't invest capital or incur economic loss or financial risk in working for the Firm. The Firm's hourly wage arrangement made it impossible for the Worker to realize any sort of profit. While a worker who can realize a profit or suffer a loss as a result of their services is generally an independent contractor, a worker who can't is generally an employee. These facts strongly indicate the Worker was the Firm's employee.

The Worker wasn't providing services to the Firm as a freelance cleaner or through engagement in an independent enterprise; rather, the Worker's services as a cleaner were a necessary and integral component of the Firm's core business: providing cleaning services to customers. The Firm set the level of pay for services and customers paid the Firm – not the Worker. The parties could terminate their working relationship at any time without penalty or liability. Our research doesn't find, and the parties don't present, any evidence suggesting the Worker did similar work for others as an independent contractor or advertised business services to the general public during the time he worked for the Firm. These facts combined point to an employer-employee relationship between the Firm and Worker.

As noted above, common law factors are considered when examining worker classification issues. Based on the facts presented and researched, this analysis under the common law concludes the Firm had the right to exercise direction and control over the Worker to the degree necessary to establish the Worker was a common law employee of the Firm during the relevant time period, and not an independent contractor operating a trade or business. Accordingly, the Worker is classified as an employee of the Firm for employment tax purposes.

The Firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.