

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.74 RepairMaintenanceWorker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is an auto sports service and repair business operation. The firm engaged the worker through an application process to perform auto services and repair services as well as other duties as assigned for the firm's business operation. The firm and other firm designated employees provided the worker with on-the-job training at the beginning of the working relationship. The firm assigned the worker services to perform based on the firm's business needs. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's work schedule varied based on the firm's business needs. The firm required the worker to perform the services personally at the firm's place of business. Substitutes or helpers were hired and paid by the firm per the worker. The firm indicated not applicable to hiring and paying substitutes or helpers.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal tools. The worker did not lease equipment or space. The worker did not incur any on-going significant business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm carried 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 received paid vacation benefits from the firm during the working relationship. The worker did not perform similar services for others. The worker did no advertising as a business to the public. The firm referred to the worker as a representative of the firm's business to the customers. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

The firm paid the worker as an employee and independent contractor during the working relationship. The services remained substantially the same. The worker indicated the work was slow when the change of classification occurred and the firm indicated the worker determined the work schedule and did not receive the same direction and control in performance of the services as reason for change of the worker's classification.

Analysis

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.

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.

Therefore we conclude that the worker was an employee for federal employment tax purposes during the entire working relationship.