

# SS-8 Determination—Determination for Public Inspection

Occupation 02AAD Drafting	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 limited liability company in the business to provide residential drafting and home design to the clients. The worker was engaged by the firm as a drafter. The worker would go with the firm to meet customers and to acquire the information needed to provide a design for the client.

The worker did not need specific training as the worker had already received B.A. Degree for Interior Architecture and Design. The worker stated she was provided with job instructions. The firm set the appointments for the worker with their clients. The worker was required to report to the firm the amount of time she performed services for specific clients of the firm. The worker had a flexible schedule where she could perform services at the firm's location or at her own residence. The worker stated she was required to attend weekly staff meetings. The firm stated it was also beneficial for the worker to visit the job site and meet the clients. The worker stated she was required to perform her services personally and the firm stated the worker was not required to perform her services personally.

The firm did provide the worker with an office, office supplies and equipment. The firm also provided the AutoCAD program for the worker. The worker provided her own laptop. The worker did not lease any space to perform her services. The worker stated she did not incur any expenses in performing her services. The firm stated the worker did incur office equipment, tools of the trade and transportation costs. The worker was paid by the hour. The customers paid the firm directly for the services provided to them.

The worker did not receive any benefits. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others and there was no evidence provided that the worker performed similar services for others. The worker performed her services under the firm's business name. The firm discharged the worker from her services.

We were provided with copies of evaluations done by the firm on projects the worker performed for the firm's clients.

There was an email from the firm to the worker requesting the worker to go for a photo shoot to be included in the staff pictures for the firm and to include a bio to go with the staff picture.

Emails showing the clients contacted the firm to set up an appointment to meet with the worker.

There was a record that showed the worker was paid weekly for her services.

There were copies of time cards submitted by the worker.

Copy of a [REDACTED] entry where the firm terminated the worker's services.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 the instant case, the worker's services were the beginning of the firm's agreement with fulfilling their needs.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. In the instant case, the worker was required to submit a time record for the hours she performed which demonstrated control over the worker.

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. In the instant case, firm did evaluations sheets on each project the worker performed so the worker could improve her workmanship which demonstrated control over the worker's services.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. In the instant case, the worker did not have a significant investment in the performance of her services. The worker received an hourly rate according to how many hours the worker performed her services and the firm was responsible to collect the amount they charged to their clients.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. In the instant case, the firm discharged the worker on social media as the firm felt the worker was being disrespectful.

The worker was an employee according to common law. The information provided by both parties showed control by the firm assigning the worker her projects and then evaluating the worker on the services she performed. The fact the worker was required to submit time records for the services she performed showed control over the worker. The firm had the financial investment as the provided the worker with a CAD program, office and office supplies. Financial control was also demonstrated by the firm setting an hourly rate of pay to the worker. The fact the worker's services was the first step in the firm providing services to their clients demonstrated the worker's services were integrated into the firm's daily operations. The firm discharged the worker from her services which showed the firm retained control over the worker's services through the threat of dismissal.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989