

# SS-8 Determination—Determination for Public Inspection

Occupation 02AAD Architects, Artists, and Designers	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 in the business of providing stained glass design and fabrication services. The worker was engaged as an artist, designer, and installer as well as to provide the glass construction as well. He received a Form 1099-MISC for his services in 2016 and 2017. There was no written agreement.

According to the worker, the firm taught him the stained glass craft. The firm noted that it instructed him about the safe handling of lead as well as on the use of masks, aprons, gloves and special soaps. The worker was designated specific tasks by the firm. Each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm would be contacted for any issues or problems that arose. The firm indicated that the worker was to keep track of his time, and of any material used by him. The firm noted that it had regular operating hours but that the worker did not keep set scheduled hours for a variety of personal reasons. Both parties agreed that the worker worked at the firm's premises and at customers' locations. The firm added that the worker worked from home as well. There were meetings; the firm disagreed. Both parties agreed that the worker was to provide the services personally.

The firm provided all supplies, equipment and materials. The firm noted that the worker was paid a lump sum but provided no invoices or bills. The firm had the worker report his time so presumably the worker's compensation was based on an hourly rate. Both parties agreed that the worker had no other economic risk. The customer paid the firm. Both also agreed that the firm established the level of payment for services.

Only the worker indicated that there were paid holidays and personal days. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker quit or left.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm obtained the stained glass work and engaged the worker to supply his labor as needed for its operations. The worker had no or limited experience in this line of work and was trained by the firm in this craft. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. He worked at the firm's premises as well as at customers' locations designated by the firm. The firm added that he worked from home as well. 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. The worker reported his time and the materials that he used to the firm. 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. While the worker's hours varied, he worked during the firm's operating hours. In addition, his services were continuous and not just performed on a one-time basis. 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.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. The worker had no significant investment in the equipment, tools, or materials that he used when working for the firm. 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. It also was reasonable to assume that the worker received an hourly rate of pay and had no other economic risk other than the loss of this compensation as the worker submitted his hours worked to the firm. 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There was no written agreement. The worker was engaged to provide his labor as an artist, designer, fabricator, and installer, for the firm's stained glass business. When doing so, the worker was not engaged in a separate business venture. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship 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 see Publication 4341 for guidance and instructions for firm compliance.