

# SS-8 Determination—Determination for Public Inspection

Occupation 02ADM Administrators	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

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is an ambulance service and the worker was engaged to perform professional services and consulting on human resources, billing, creating proposals, creating contracts and employee evaluations, and as an ambulance driver and paramedic. The firm believes the worker was an independent contractor while performing services for them as he worked from his home office which was outside of their premises, he did not have a specific time schedule or hourly limit, and he created his own service contract. The worker previously performed services for the firm from October 26, 2015 to May 2017 and from April 2018 to November 2018. The firm states that during the first period of time, the worker performed more ambulance driving on specific shifts.

The firm states the worker offered his services to them and they agreed based on their necessities such as contracts, forms, employee schedules, ambulance travel routes, etc. The worker received his assignments from the firm via meetings with the firm's owners and via telephone calls. Both parties determined how the worker completed his assignments. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was required to personally perform his services and his services were performed at the worker's home 90% of the time and 10% of the time at the firm's premises. The worker was required to submit business contracts and forms, payroll schedules, etc. to the firm. The worker did not have a set schedule. The firm states the worker was required to attend meetings with them to show the work that has been done and to offer advice in certain matters such as human resources. The firm states the worker was responsible for the hiring and paying of substitutes or helpers.

The firm states they provided a desk, file cabinets, printer and inks, paper, and ambulance to the worker in order to perform his services. The worker provided a computer and telephone and he incurred expenses for utilities (power and water) telephone and software. The firm states they reimbursed the worker for office supplies and occasional meal expenses. The compensation paid to the worker was upon mutual agreement between the firm and worker. The firm states the worker could incur a loss due to the damage of his equipment.

The firm states the worker performed similar services for others but to the firm's knowledge, the worker did not advertise his services. The worker was represented as a contractor performing his services under the firm's business name. Either party could terminate the work relationship at any time without incurring a liability. The worker terminated the work relationship.

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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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of the firm rather than an entity of his own. The worker was required to meet with the firm's owner(s) to show the work products/tasks he had completed. There was no evidence submitted or found in this investigation that indicates the worker had a business advertising these same services to the public. The firm retained the right to direct and control the worker and his services in order to protect their financial investment.

The firm afforded the worker with a great deal of freedom while performing his services as the majority of his services were performed away from the firm's premises. With more and more workers working out of their home office and this becoming the reoccurring trend in the current workplace, this fact by itself, does not mean that the worker is not an employee. The firm stated in their response that the worker was required to meet with the firm to show the firm his completed tasks. The firm was ultimately responsible for the resolution to any problems or complaints because it was their business although the worker may have assisted with a resolution to the problem/complaint. While the firm may feel this is not exercising control; this is exercising control. If the firm retained the right to be able to change, adjust, or require that certain tasks are done a certain way or at a certain time, that is exercising control.

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. While the worker provided his own computer and utilities while working at home, this is not considered a significant investment. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. It is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him.

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.