

**SS-8 Determination—Determination for Public Inspection**

Occupation 02ADM.5 Administrator	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

The firm is a non-profit patient advocacy disease specific organization that educates affected individuals. The worker was engaged as an administrator to organize events, create a registration, maintain e-mail contact with attendees as well as perform project design and community outreach. She also worked on grants, answered phones, filed and performed other administrative duties. She received a 2014 Form 1099-MISC for her services; however, taxes were initially withheld for the entire work relationship before being refunded to the worker. There was no written agreement.

The firm mentioned that the worker received training through grant writing classes, in-person meetings, and on-line courses. The worker noted that she was trained by an intern for the first two days as well as given brief instructions about her duties from the executive director. Both parties agreed that the firm gave the worker her work assignments verbally and via email. Each party indicated that the other determined the methods by which the assignments were performed and that the firm's executive director would be contacted if any issues arose. The firm only noted that the worker submitted lay-outs/set-ups of displays and newsletters. She proofed documents and brochures as well. The worker arrived at the office in the mornings to check phones, faxes, and emails. She developed a schedule for the executive director and determined the tasks for the day before leaving at the end of the day. The firm indicated that she had a flexible schedule dependent on the assignment/project; any health tradeshow shifts were shared. The worker indicated that she worked mostly at the firm's office and the rest of the time at conferences and member meetings. The firm indicated that the worker worked at various locations such as home, library, coffee shop, shared office at [REDACTED], and outreach facilities. There were required meetings with the firm who noted that the worker worked as part of a team. Only the worker indicated that she was to provide the services personally with the firm hiring any substitutes.

Both the firm and the worker agreed that the firm provided computers and printers. The worker provided her cell phone, and travel to/from work. The firm included that the worker also provided a laptop and computer. The worker incurred mileage and meal expenses during work hours. She also incurred travel costs for out-of-town business conferences but those meals, hotel, and taxi costs were reimbursed by the firm; the firm agreed. The worker indicated that she was paid a salary but the firm noted that her fee was based on an hourly rate. The firm indicated that the level of payment for services was negotiated, but the worker noted that it was established by the firm.

The worker noted that there were benefits; the firm noted that there were none for the first six months. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. The worker had a business card provided by the firm. The relationship ended when the worker quit.

---

## Analysis

---

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 mission. In fact, the firm treated the worker as an employee by withholding taxes. The firm provided the worker with instructions and her assigned duties/projects. While the worker may have been given considerable latitude in providing her services, she had project deadlines, reported to the office, and was accountable to the firm's executive director. The firm provided training. 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.

The worker may have had some flexibility in her scheduled work hours and days; however, she was essentially working full-time. The term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work.

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 received a salary and was paid every two weeks. Her pay may have been based on a set number of hours; there was no evidence submitted indicating that the worker submitted any bills for fees - again, the firm was paying/treating her as an employee during the work relationship. In addition, 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 as the firm's administrator. She was not engaged in an independent business venture when working for the firm, but rather her services were part of the necessary activities of the firm's operations. 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 *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B.174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties. Also, the firm cannot simply decide that the employment relationship had not existed and solve the dilemma by refunding the taxes previously withheld when the facts supported an employer-employee relationship.

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.