

# SS-8 Determination—Determination for Public Inspection

Occupation 02ADM.14 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 worker requested a determination of employment status for services performed for the firm as a developer and trainer. The firm operates a childbirth education company and responded to our request for information as follows:

The firm is a childbirth education company that trains and certifies childbirth educators and doulas. The firm also provides childbirth classes online. The worker was the co-creator of the doula curriculum and helped to develop training material and to train doulas under the [REDACTED] brand. The firm believes that the worker was treated correctly as an independent contractor because she worked independently, had no set hours or location, worked primarily under her own direction in collaboration with the company and was paid based on the number of doula trainees per training session or completion of a project. The worker performed her services under a written contract. The worker performed her services in collaboration with the firm to develop training materials. The worker was chosen as she works as a doula. The firm stated the worker owns her own agency. Assignments were divided up based upon need during development. Trainings were set-up as agreed by both parties. The methods were mutually agreed upon. The worker handled her own issues but if unable the firm was there. The worker participated in team calls to coordinate efforts. The worker personally performed her services. Trainings were typically held in hotels. Customers paid the firm. The firm and the worker mutually negotiated the price per trainee. The worker received bonuses but no other benefits. Either party could have terminated without liability. The worker terminated the relationship and started a competing business. The contract sent in was not signed. It listed the duties of the position.

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## Analysis

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.

Therefore, a 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. 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. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The firm stated that the worker performed her services in collaboration with the company. She was told what was needed of her. The firm maintained the right, even if they did not exercise that right, to direct and control the worker in the performance of her services.

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. The worker performed the services as part of the firm's business.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. The worker had no investment in the firm's business.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker could not suffer a loss. She acted as a representative of the firm to the firm's customers.

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.

Firm: For further information please go to [www.irs.gov](http://www.irs.gov) Publication 4341