

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

Occupation 02CON Consultants	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 worker initiated the request for a determination of her work status as a dissertation coach for tax years 2012 to 2018, for which she received Forms 1099-MISC. The firm's business is described as dissertation coaching and consulting services inclusive of data analyses, assistance with research methods and related activities for doctoral and master's students and research professionals.

The firm's response was signed by the firm's president. The firm's business is providing academic coaching and consulting services. The worker provided services as a consultant and statistician to graduate students and professors.

The worker indicated she was given training and instructions on contacting clients after the initial referral, the firm's time sheets, and the regular 'Water Cooler' meetings regarding clients. The client contacted the firm, the firm made the initial phone call to the client, and then matched the client to a worker, the firm then sent an email to the worker, who then contacted the client. The firm determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were directed to the firm for resolution. The worker provided time sheets and status updates as to the clients. The worker was required to follow the firm's guidelines and was required to cc the firm when emailing a client. The services were rendered at the worker's home office. The worker stated she was required to be available for at least 8 hours per day Monday through Friday, generally 12 noon to 8pm and 4-8 pm on Sunday. She was required to let the firm and clients know of her availability. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, there was no specific training and instructions given to the worker. The firm provided leads to the worker. The worker determined the methods by which she performed the job; and, was responsible for the resolution of any problems or complaints she encountered. It was unknown to the firm as to when and where the worker's services were rendered. The worker was not required to perform the services personally; any additional personnel were hired and paid by the worker.

The worker indicated the firm provided the website and phone system, client contact lists, and client tracking and invoicing systems. The worker provided a computer, SPSS, and statistical software. The worker did not lease equipment, space, or a facility. The worker was on occasion reimbursed for software and allowed advances. The firm paid the worker an hourly wage. The clients paid the firm, The worker was not covered under the firm's workers' compensation insurance policy. The worker responded that she was at risk for a financial loss in this work relationship due to loss of livelihood; she was fired. The worker did not establish the level of payment for the services provided.

The firm's response was that the firm provided nothing; and, the worker furnished everything. The worker was paid by the project, The clients paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm indicated the worker was at risk for a financial loss in this work relationship due to loss of revenue, legal implications, and loss of reputation. The worker established the level of payment for services provided.

Both parties acknowledged there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was performing same or similar services for others during the same time frame, and stated she was required to obtain the firm's approval; however, she was fired for having her own clients. The worker had no responsibilities to solicit new customers and any leads to prospective clients were to be sent to the firm; the firm invoiced the clients. The worker provided copies of email traffic regarding the assignment of new clients, new billing procedures, and a letter regarding the dissolution of the work arrangement. The firm provided an unsigned copy of the contract for services dated March 15, 2012; the worker indicated there was no written agreement. The firm terminated future contract work.

---

## Analysis

---

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.

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.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 firm's 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.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

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.