

# SS-8 Determination Analysis

Workers name

Natalie G. Ramos

Firms name

Occasion Services

The Internal Revenue Service applies the common law standard to the facts to determine employment status. Generally, the relationship of employer and employee exists under the common law when the person for whom services are performed has the right to direct and control the means and methods by which the individual who performs the services must accomplish the work. If a worker is subject to control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, the individual is generally not an employee. The information below describes the facts we considered in your case and how we analyzed those facts.

## Facts of Case

Information provided indicated the firm provides event planning services to its clients. The worker performed services for the firm for tax years 2014 through 2018 as an assistant event planner, specializing in sales and obtaining clients. The firm indicated she was hired to do backdrops and ceilings and planning weddings. At the time she agreed to be paid per event, and completed Form W-9. The firm reported the income paid on Form 1099-MISC. If there was no event, the worker did not get paid. The worker provided "tax invoices" for payment, (copies provided) The firm indicated the worker attended seminars to be trained as a planner. The firm indicated she was pursuing her own clients. The worker decided who to take on as her client. The firm indicated the worker provided weekly Completion Summaries. There was no set routine. She was working from her home office, according to her clients needs. The firm indicated it provided the showroom, and supplies that was rented to the customers. The worker provided her own tools and computer. The worker paid for her own expenses. Nothing was reimbursed. Either could terminate the work relationship without incurring a penalty or liability. The firm indicated she did perform similar services for other, their approval was not required.

The worker filed the SS-8 for services performed as an event specialist for the firm. She feels she was treated as an employee and not an IC. She was provided on the job verbal training. Given verbal or written instructions via e-mail or hand written notes. She provided daily activities sheets with a list of the activities she did throughout the day. She performed services Tuesday through Friday eight to four pm and Saturdays and Sundays as needed. The firm hired and paid all workers. The firm provided all supplies, equipment. She provided her own cell phone. She was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability

Form **14430**  
(Rev. March 2014)

Department of the Treasury - Internal Revenue Service

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### Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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 applied the above law to the information submitted. 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

### CONCLUSION

Based on common law, I find this was an employer/employee work relationship. All work performed as instructed by the firm, under the firm's business name, utilizing the firm's equipment and supplies. Whether paid by the hour or per event, the firm controlled the charges made to their clients. (Per their website). The client paid the firm for the work performed. The services were performed on a continuing basis, under the firm's business name. The firm indicated the worker had training as an event planner, therefore, they may not have been required to direct her every move, but since the work was performed for their clients, they had the right to direct and control.