

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

Occupation 02COO Coordinators	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 submitted a request for a determination of worker status in regard to services performed for the firm from July 2014 to September 2016 as an event coordinator. The firm issued the worker Form 1099-MISC for 2014, 2015, and 2016. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error because they feel they do not need the criteria to be classified as an independent contractor. A written contractual agreement between the two parties was provided by the worker, in addition to a letter from [REDACTED], providing further analysis of the factors regarding employment classification for the worker.

The firm's response states it is a merchant association for the promotion and marketing of a [REDACTED]. The work provided by the worker was that of event planning. The worker was requested to organize events, produce membership activities, and provide office work regarding these activities. The firm states that the worker was an independent contractor because they signed a contracting agreement with the firm.

The firm states that they provided the worker with instruction regarding all of the work tasks that had to be completed. The firm states that the worker would receive job assignments verbally. The firm's supervisor and the worker would determine the methods by which job assignments were performed. If the worker encountered any problems or complaints during their job assignments, they were required to contact the firm's supervisor or board member. The worker was required to provide verbal reports to the firm. The worker provided services for the firm during the firm's office hours three to four days a week and at the worker's discretion. The worker would provide services at her office and at various event locations. The worker was required to attend committee meetings, but there were no penalties for not attending. The worker was required to perform all services personally. If helpers or substitutes were required, the firm's supervisor would hire and pay the assistants. The worker states that they were given training on configuring an event layout, processing and documenting vendor applications and payments, proper event registration procedures, and the use of office equipment. The worker received job assignments from the firm's executive director/board of directors who also determined the methods by which job assignments should be performed and were responsible for problem resolution. The worker states that no reports were required, and that they worked during the weekday office hours of the firm four days a week but provided services on event nights or weekends. The worker provided a copy of their daily schedule of tasks for our consideration. The job duties were performed at the firm's premises. There were no meetings required but the worker had to provide all services personally. The board of directors were responsible for hiring any helpers or substitutes and for paying them.

The firm states that they provided all of the necessary equipment and supplies and the worker did not have to provide anything for their job duties. The worker did not have to lease space, facilities, or equipment. The worker did not incur any expenses in the provision of services for the firm. The worker was paid on a commission basis with bonuses provided per event. The worker did not have access to a drawing account for advances. The customer would pay the firm for all services rendered. The firm did not carry worker's compensation insurance on the worker. The worker did not have access to economic loss or financial risk, and the firm's board of directors set the level of payment for services rendered. The worker states that the firm provided all office space and supplies and equipment for the job duties. The worker did not have to provide anything for the job nor did they incur any expenses. The worker states that they were paid salary and did not have access to a drawing account for advances. The worker provided a contract agreement that shows they were paid a set amount bi-monthly. The worker states that they did not have any exposure to economic loss or financial risk while performing their job duties.

The firm states that the worker was paid based on a contract regardless of attendance, and the work relationship could be terminated by either party without liability or loss. The firm states that the worker performed similar services for other firms at the time they worked for the firm, and they did not require approval from the firm to do so. The worker was not a member of a union. There were no agreements prohibiting competition between the worker and the firm. The worker was represented to clients of the firm as a representative. The work relationship ended when the contract was paid in full and was about to expire and did not get renewed. The worker states that they were given paid vacations, paid holidays, and bonuses by the firm. The worker states that they did not perform similar services for any other firm while working for the firm. The worker provided a non-disclosure agreement between the firm and the worker. The worker did not advertise their services to the public. The worker states that they were represented as an employee of the firm. The worker provided a copy of the board's termination of their contract to indicate how the work relationship ended.

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## Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of promoting the historical village through events. The firm provided work assignments by virtue of the events planned, required the worker to verbally report on services performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the bi-monthly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.