

-----

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

Occupation

COO - Coordinators

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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 Form SS-8 for services performed for the firm as an Event Coordinator from January 2025 until November 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because they had a set schedule, followed company policies and was told what tasks to complete. The written agreements between the parties is described in the offer letter presented to the worker. The oral agreement between the parties was that the worker would perform tasks as requested by the firm.

The firm states that they are a non-profit education for metaphysical business. The firm hired the worker as an independent contractor because the worker was a contractor to help support, develop and manage mediation. The written agreements between the parties was that the worker would perform event management duties. The oral agreement between the parties was that the worker was hired to setup and manage scheduled events for the center.

The firm states that the worker was shown how to set up events and manage them. The firm provides work assignments that are received in person and by phone. The firm determines the methods by which job duties are performed. If the worker encountered any problems or complaints while working, they were required to contact the firm. The firm did not require the worker to complete reports. The worker completed setup and management as scheduled 50% on the firms premises, 35% remotely and 15% off site locations. The firm did require the worker to attend event management meetings but would not be penalized if not in attendance. The firm did require the worker to provide services personally. The worker had no hiring authority.

The worker states the firm did give assignment instructions. The firm gives the worker work assignments in person, by phone, email and text messages. The firm determined the methods by which job duties were performed. If any problems or complaints arise, the firm was to be contacted. There were no reports required of the worker. The worker performed job duties as schedules, 90% of the time remotely, and 10% off site events. The worker was required to attend staff meetings but would not be penalized if not in attendance. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided branded banners and marketing supplies for the events. The worker did not lease any space or equipment. The worker did not incur any job-related expenses. The firm paid the worker an hourly wage. The firm did not give the worker access to advance pay. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm.

The worker states that the firm provided laptop, desk, phone, supplies, credit card and printer while the worker provided none. Expenses are incurred by the worker that would be reimbursed by the firm. The firm paid the worker an hourly rate of pay. Customers paid the firm. The worker had no exposure to financial risk or loss. The firm set the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public or assemble products at home. The firm did not introduce the worker to its customers. The worker no longer works for the firm.

The worker states that there were no benefits provided to them by the firm. The worker did advertise services to the public by providing newsletters but did not assemble products at home. The firm did introduce the worker to its customers as an employee. Services were performed under the firm's name. The worker no longer works for the firm.

---

## 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.”

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, co-adventurer, 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.

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. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

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.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer’s instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

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.