

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

Occupation 02CSP Computer Services Personnel	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 firm is a limited liability company that operates a continuing care retirement community. The worker was engaged by the firm as a communication's manager/social media consultant. There was no written agreement between the two parties.

The worker received instructions on team building, team structure and the firm's management feedback process. The worker received her assignments from the firm and one of the principals of the firm oversaw the worker's services. The worker was required to submit monthly reports to the firm. The worker ultimately relied upon the firm to resolve any problems or complaints that she could not resolve. The worker was required to submit reports for the time she performed her services and what services she performed.

The firm provided her with a phone and the software she needed to perform her services. The firm reimbursed the worker for travel, expenses for ads or other marketing, and marketing tools. The worker did not have a significant investment to provide her services to the firm. The worker was paid on an hourly rate.

The worker did not receive benefits while she performed her services. Either party could terminate the relationship without incurring a liability. The firm terminated the worker's services.

The firm provided the additional information that the worker was one of the principals daughter-in-law. The worker was engaged by the firm when the firm began advertising through social media. The worker began assisting with Facebook and then assisted with other communication tools, like newsletters, e-blasts, etc. The firm had discussions of whether or not they were treating the worker correctly. One of the firm's principals oversaw the worker's services. The worker would provide reports on the results of the social media. One of the principals of the firm asserted the worker was not functioning as an independent contractor. The same principal stated he was treating the worker as an employee. The other principals agreed the worker would be treated as an employee but they needed a job description for the worker. The job description was never provided so they did not change the worker's status.

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## Analysis

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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.

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 the instant case, the worker provided services as a communication's manager/social media consultant which was integrated into the firm's services in advertising their business name to acquire clientele.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. In the instant case, the worker did receive training on team building, team structure, and the firm's management feedback process. This demonstrated the firm wanted the services performed in a particular manner. This was further demonstrated by the fact one of the principals of the firm oversaw the worker's services.

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. In the instant case, the worker was paid by the hour according to the report of her time that she submitted.

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. In the instant case, the worker did not have a significant investment and could not suffer a significant loss as operating their own business.

The worker was an employee according to common law. The information provided by both parties shows the worker was engaged by the firm to perform specific duties under one of the firm's principal owners. The fact the worker received training on how to perform her services showed control. Control by the firm was also demonstrated by the firm giving the worker her assignments. The fact the worker performed under one of the principal owners of the business and he stated he treated the worker as an employee showed control over the worker. The worker did not have a significant investment and did not incur significant expenses as being self-employed. The fact the firm discharged the worker demonstrated control over the worker through the threat of dismissal.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341  
Worker: Notice 989