

# SS-8 Determination—Determination for Public Inspection

Occupation 02CSP Data Entry Clerk	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 data entry clerk in tax years 2017 and 2018. In this capacity she entered data from various paper documents into computer spreadsheets under the supervision of the accounting manager. The firm's business is described as non-profit organization providing support to the [REDACTED] population of [REDACTED]. The worker acknowledged that she began her association with the firm as a volunteer until April 2017 when she was offered a part-time position.

The firm's Form SS-8 was not signed; however, an attached cover letter referencing the work relationship was signed by the Executive Director, USA. The firm's business is described as a non-profit organization whose mission is to provide enduring programs of practical, social, and spiritual value to the people in the developing world through a system of partnership and mutual responsibility. The worker performed services as a general office clerk. The firm noted that the worker was an unpaid volunteer, who wanted to become a permanent employee, but the firm was not able to provide permanent employment. The firm offered her the option to become a part-time paid contractor on an as-needed basis for data entry. The agreement was verbal.

The firm and worker concur that specific training and instructions were provided to the worker as to how to enter data. The job assignments were given on a daily basis from a supervisor. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises 15-20 hours per week. The worker was required to perform the services personally.

Both parties acknowledged the firm provided furnished office space, a computer and software, and office supplies. The worker furnished nothing; she did not lease equipment, space, or a facility and she did not incur expenses in the performance of the job. The firm paid the worker an hourly wage. Customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker and firm indicated the worker was not at risk for a financial loss in this work relationship. The firm and worker agreed to the hourly rate of \$X/hour.

The firm and worker agree that no benefits were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The work relationship ended when the firm was unable to secure funding to transition the worker to a full-time permanent employee position, with the worker pursuing opportunities elsewhere.

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## Analysis

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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.

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.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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. For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods.

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. 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

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.