

# 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 in the business of providing design and internet marketing support for its clients' businesses. The worker was engaged by the firm as a web designer. The firm reported the worker's remuneration on Forms 1099-MISC for 2015 through 2017.

The worker submitted information showing the firm made consistent bi-monthly payments. The worker also submitted emails in which the firm requests that the worker provide regular updates throughout the day; a request that he provide invoices to the firm by the 1st and 15th of each month; set-up instructions for the worker to log into the firm's mail server; and statements indicating that the worker's treatment as an employee in another state creates additional time and costs for the firm, and that anyone outside of [redacted] or [redacted] needs to be treated as an independent contractor. The worker also submitted travel arrangements made by the firm in order for the worker to travel to the firm's location.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The firm provided the worker with his work assignments. If problems or complaints occurred, the worker contacted the firm for resolution. The worker performed his services from his home. The firm stated that the worker set his own schedule and that he was not required to perform his services personally.

The worker utilized his computer and any supplies and materials needed to perform his services. The firm did not cover the worker under workers' compensation. Customers paid the firm directly at prices established by the firm. Neither party indicated the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The worker provided similar services for others during the same time period.

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## Analysis

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Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm relied upon the worker's prior training and experience to perform his services. 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. The firm was responsible for resolving any problems or complaints that may have occurred, showing 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. The worker was required to provide the firm with regular updates. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker performed his services from his home. 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. There is no indication that the worker engaged and paid others to perform services for the firm on his behalf, presuming 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. There is no evidence to suggest the worker's computer was purchased exclusively for business purposes. Presumably this item was also used by the worker for his personal needs. Therefore, it is not considered a significant business investment. The firm paid the worker on a bi-monthly basis in consistent amounts. 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. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The worker was not engaged in an independent enterprise while performing services for the firm, but rather the programming and related services performed by the worker were a necessary and integral part of the firm's business of providing design and internet marketing services. 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 business. The worker performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not make benefits available to the worker, neither party incurred a penalty of liability at the termination of the work relationship, a factor indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.