

**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 worker initiated the request for a determination of his work status as a computer technician in tax years 2016 through 2018, for which he received Form 1099-MISC. The worker completed an application for the job. The firm's business is described as technical computer services for medical and residential clients.

The firm's response was signed by the president. The firm's business is computer technician services and the worker provided services as a field computer technician. The firm indicated the worker responded to the company's ad that was posted on Craigslist. The position of the Technical Support Representative was responsible for installation, setup, support, maintenance, trouble shooting, updating and repair of IT networks, computer hardware and software, printers, wireless networks, anti-virus programs, routers/switches, etc., at client sites. The ad outlined the qualifications, education, and experience needed for the position. The applicant would be required to enter time in an online scheduling system. Benefits would include car allowance, cell phone, vacation, and health coverage. The worker was hired as a contractor with the opportunity to become a W-2 employee; the worker was to prove his knowledge and technical abilities and that the firm's customers liked him.

The firm provided in-office training. The job assignments, received and delegated by the firm, were sent to worker via email. The firm and worker concur the firm determined the methods by which the worker's services were performed. The worker was required to complete the work order with time of arrival and a complete detailed description of the job being done. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered 75% at customer locations and 25% at the firm's office. The worker was required to perform the services personally.

According to the firm, the firm or customer provided the materials and supplies; and, if the worker furnished parts he was reimbursed by the firm. The firm also indicated the worker was reimbursed for gas. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage. The clients paid the firm. The worker was covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm responded that the worker would deal with the clients, computers, and the business or personal data and if worker made a mistake, the firm would be responsible, adding that the worker's behavior had a direct affect on the firm's relationship with its clients. The worker did not establish level of payment for services provided or products sold.

Both parties concurred that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. It was unknown to the firm as to whether the worker was performing same or similar services for others during the same time frame; the worker indicated he was not.

The firm and worker provided a copy of the Independent Contractor Agreement which provided the following: the services to be rendered were field technical services, computer help desk, wiring, server setup, audio and video installation; the hourly rate of \$XX was payable on the 15th and the last day of the month; the worker was to provide in writing, in a format acceptable to firm, a complete listing of all activities performed by worker consisting of dates, names, nature and result of contacts and all other relative data.

The firm provided a copy of the Letter of Termination which indicated the worker received prior warnings and that some clients terminated dealings with the firm, and as a result the firm was not able to change his status into a full-time employee. The firm severed his employment as a contractor; the final check issued upon the worker providing any outstanding time sheets and/or expense reports, along with the return of the firm's equipment.

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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.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

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.

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 and that its contractual obligations were met. 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.