

## SS-8 Determination—Determination for Public Inspection

Occupation

02LAW Law Clerk

UILC

Determination:

☒ Employee

☐ Contractor

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 firm is a law office. The worker was a law student engaged to research, copy, and answer the phones. She received a Form 1099-MISC for her services in 2016 and 2017. There was no written agreement.

Both the firm and the worker agreed that the firm provided instructions and training as well as assigning the worker her daily work assignments. She was told how to answer phones, what legal issues to research, and what documents to draft. The firm determined the methods by which the assignments were performed and would be contacted if any problems or issues arose, although the firm included the law school supervisor as well. The worker submitted phone messages, conducted research and drafted documents. The worker worked a fixed schedule, based on her availability and worked when needed by the firm at its location. There were no formal meetings. Both parties agreed that the worker was required to provide her services personally; only the firm hired and paid any substitute workers according to the worker.

Both the firm and the worker agreed that the firm provided all equipment, and supplies, such as a computer and copier. The firm noted that the law school provided the computer resource program. Both parties agreed that the worker was paid by the hour, filled out weekly timesheets and had no other economic risk. The customer paid the firm. Each party indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The relationship has ended.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm engaged the worker, a student, to provide law clerk duties. Undoubtedly, the firm provided instructions, training, and guidance to the worker as she was acquiring on-the-job work experience. 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. The worker performed her services when available and when there was work. While the establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The fact that the worker was required to provide the services personally, was also another element of control. 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. This was understandable as the firm was providing instructions and guidance to the worker involving her work assignments.

Factors that illustrate whether there is 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. The worker had no investment and therefore, no economic risk. The firm provided the property, equipment, furnishings and supplies enabling the worker to perform her services. In addition, the worker's hourly rate of pay also indicated an employer-employee relationship. 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.

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. There were no benefits and there was no written agreement. The worker was engaged to provide her law clerk services for the firm's law office. When doing so, the worker was not engaged in a separate business venture. The fact she was going to school, had a law school supervisor, worked part-time, and worked when available, did not make her self-employed. 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.

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 see Publication 4341 for guidance and instructions for firm compliance.