

# SS-8 Determination—Determination for Public Inspection

Occupation 02LAW.55	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

## Facts of Case

The worker initiated the request for a determination of her work status as an associate attorney in tax years 2010 through 2015. The firm's business is described as a law firm dealing with estate and general practice matters.

The firm's response was signed by the firm/owner. The firm's business is described as a law firm. The worker performed services as an intern doing research and filing.

According to the firm, the worker was not given training or instructions; however, the job assignments came directly from the firm/owner and it was the firm who determined the methods the worker was to use to perform her job. The worker was required to contact the firm in the event of a problem or complaint that required resolution. The firm responded that the worker determined her hours and the services were rendered at her home or the firm's office. The worker was required to perform the services personally.

The worker stated she was given training and instructions daily on the day's work, meetings, client interactions, court briefs, and memorandums. She acknowledged that the firm determined the job assignments and the methods by which the worker's services were performed. The worker indicated she performed her services on the firm's premises, Monday through Friday and confirmed she was required to perform the services personally with any additional personnel being hired and paid by the firm.

Both parties agreed the firm provided computer access and office supplies and that the worker furnished nothing; she did not lease equipment, space or facilities and did not incur expenses in the performance of the job. The worker was paid an hourly wage; the clients paid the firm. The worker was covered under the firm's workers' compensation insurance policy. The firm and worker responded the worker was not at risk for a financial loss in this work relationship; but, disagreed as to which party established the level of payment for the services provided.

There were no benefits extended to the worker other than occasional bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The firm stated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm responded that the worker performed the majority of the projects in the office and the firm represented the worker as an intern.

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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.

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.

We have considered the information provided by both parties and have applied the above law 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.