

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Intern	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 a non-profit organization. The worker was engaged as an intern who researched and reported on environmental conditions related to the organization's projects. She received a 2017 Form 1099-MISC for her services. There was no written agreement.

The worker had filled out an application to obtain the internship position. As the worker was an intern, it was the organization that provided instructions on how to perform various tasks. She received her daily assignments through the manager/boss who determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker was required to submit reports to the organization including timesheets. Both parties agreed that the worker worked five days a week, for about 35 to 40 hours at the organization's office. There were required staff meetings to attend. The worker was required to provide the services personally.

Both the organization and the worker agreed that the organization provided the office, desk, laptop and supplies. They also reimbursed the worker for mileage, food and supplies. Both parties agreed that she was paid an hourly rate and had no other economic risk. The customer paid the organization. The organization established the level of payment for services.

Both the organization and worker agreed that there were no benefits other than personal days noted by the worker only. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. She worked under the organization's name as an intern. The relationship ended when her internship was completed.

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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 non-profit organization retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its mission and goals. The organization accepted applications for an intern. It engaged the worker and provided instructions regarding the position. 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. In this case, the worker had scheduled days and hours of work at the organization's location, fulfilling the when, and where criteria. As an intern, the worker was provided with guidance, i.e. the how to, part of the organization's ability to direct the worker's activities. While the worker's services were for a brief period of time, those services were continuous during that time, again indicating an employer-employee relationship exists.

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 organization provided the workplace, equipment, and supplies that the worker needed to perform her services. She simply received an hourly rate of pay and had no other economic risk. 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.

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 was no written agreement. The worker was engaged as an intern in order to gain knowledge in the organization's environmental undertaking. However, the services that she provided were also integrated into its operation. When providing those services, the worker was not engaged in an separate business venture. The fact that her services were temporary in nature did not establish a business presence, especially as an intern. 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.

It is acknowledged that the worker may have filled out a Form W-9 and received a Form 1099-MISC as a pay document; however, these forms did not establish a business presence for the worker when facts and circumstances show otherwise.

Based on the above analysis, we conclude that the organization 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 compliance by the organization.