

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	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

According to the information and documentation submitted, the firm's business is market research. The worker performed services as a Project Analysis. The worker provided data entry and event staffing along with analysis of data collected in market surveys pursuant to a "Independent Contractor Agreement". The firm reported the worker's earnings on Form 1099-MISC at year end.

The agreement provides that the worker's contractor obligations include market research services, maintaining a high standard of professionalism in all work offered by the firm to the contractor, and providing the services on time; according to a schedule provided to the contractor. The agreement provides an annual salary; with bonus eligibility based on the firm's financial performance and the contractor's job performance. The agreement provides that the worker be considered an independent contractor and will receive a Form 1099-MISC at year end. The agreement also provides that the agreement may be terminated by either party at will. The worker terminated her work relationship with the firm.

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**Analysis**

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According to the information and documentation submitted by the firm and the worker concerning the work relationship, the firm provided the worker with her assignments. The worker personally performed her services at the firm's premises according to a schedule determined by the firm.

The firm provided the necessary office equipment and supplies for the worker to perform her services. The worker was paid an annual salary with opportunity for bonuses. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the worker's services without incurring any liabilities.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. 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. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

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.

If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.