

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.60 Receptionist	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 firm is in the business of providing salon and spa services. The worker was engaged as a receptionist who also performed janitorial duties. She received a 2013 and 2014 1099-MISC for her services. There was no written agreement.

The worker obtained the job by filling out an employment application. She received her work assignments verbally from the firm's owner. Each party indicated that the other determined the methods by which the assignments were performed but both agreed that the firm would be contacted if any problems or issues arose. The firm noted that the worker was to report customer complaints. The worker's routine consisted of opening at a specific time, making appointments, and collecting payments. The firm indicated that as the receptionist, the worker answered the phone and booked appointments as well as provided information about the shop's services. In addition, she cleaned the business and ensured that there were clean towels. All of the worker's services were performed at the firm's location. Only the worker indicated that the firm would hire and pay any substitute workers.

The firm provided the mop, bucket, broom and cleaning materials. The worker noted that the firm provided a schedule book and pens. The worker was paid an hourly rate for her receptionist time as well as a set weekly amount for cleaning. Both parties agreed that the worker had no other economic risk; both also agreed that the customer paid the firm. Each 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 relationship ended when the worker quit.

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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. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

The worker may have agreed to a working arrangement in which no employment taxes were withheld; however, in [REDACTED] v. [REDACTED], 332 U.S. 126, 1947-2 C. B. 174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties. In addition, the fact that the worker worked part-time or was considered a temporary worker would not be a determinative factor regarding the type of work relationship. There is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods.

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 provided the worker with instructions and her assigned duties. She performed her part-time services according to the firm's scheduled work hours and days at the firm's shop. 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 addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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 firm provided the place to work, a phone, furnishings, equipment, and supplies for the worker to provide her services. She received an hourly rate of pay for her receptionist duties as well as a set weekly amount for cleaning. 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 were no benefits and there was no written agreement. The worker was a receptionist at the firm's place of business and performed some cleaning duties as well. She was not engaged in an independent business venture, but instead the services performed by the worker were part of the regular and necessary activities of the firm's salon operations. 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.