

# SS-8 Determination—Determination for Public Inspection

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| Occupation<br>02OFF.117 Administrative Assistant | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC   | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

## Facts of Case

The payer provides real estate services and engaged the individual as a secretary for the years 2013 through 2014. The monies she received for the services she provided for the year 2014 were reported on Form 1099-MISC.

The worker was hired for the position after completing a job application. She received training and instruction regarding dot loop, [REDACTED] listing book, and checklists. The worker received her assignments from the payer via email, voice mail and in her desk in-box. She provided these services Tuesdays, Wednesdays, Thursdays from 9:30 AM to 3:00 PM. Her responsibilities checking emails and voice mails, collecting the office mail and assignments, and calling agents back for feedback on properties. She completed time sheets and checklists as assigned. If substitutes or helpers were needed it was the payer's responsibility to hire and compensate the helpers. She was required to provide these services personally on the payer's premises.

The payer stated that the worker was an independent contractor. She agreed to be treated as such and she determined her work schedule. Although the payer believed the worker to be an independent contractor, a worker's status is not something to be agreed upon; it is the actual facts of the work relationship that is the determining factor for Federal employment tax purposes.

The payer provided all the supplies and materials necessary for the worker to provide her services. The payer provided the worker with the computer and software, desk, fax and printer, and office space. The worker stated that the payer determined the level of payment and the payer's clients paid the payer directly. The worker received an hourly wage for the services she provided. Business related expenses such as office supplies were reimbursed by the payer.

All the work produced by the worker was returned to the payer and the payer's clients. The worker provided her services under the payer's business name for the payer's clients and she was represented as an employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker resigned

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**Analysis**

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The worker received initial instruction and had the skills necessary to provide her services. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. 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 payer retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided her services.

The payer instructed the worker regarding the performance of her services. A worker who is required to comply with another person's instructions about when, where, and how 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 payer retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments.

The worker rendered her services personally. 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. The worker provided her services under the payer's supervision.

The worker provided services for the payer in the payer's name and did not perform her services in the name of her own business. She did not have a financial investment in the payer's business and could not have incurred a business profit or business loss. The worker provided her services under the payer's name, for the payer's clients, and her work was integrated into the payer's business. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's business.

Based on the common-law principles, the payer had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.