

## SS-8 Determination—Determination for Public Inspection

Occupation

OFF02.255 OfficeWorker

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

### Facts of Case

The worker requested a determination of employment status for services performed for the firm in 2014 as an office worker. The firm is an auto collision and repair shop and responded to our request for information. The firm stated the following:

The firm is an automotive repair business. The worker was responsible for collecting time cards and updating daily production totals from the previous day. She also copied invoices from the prior day. The worker was engaged to perform services as a contractor. The firm did not provide any training. The firm provided an office and general supplies. The worker was paid an hourly rate. Customers paid the firm. The worker received no benefits. Either party could have terminated without liability.

The firm sent in information from the state unemployment. The information stated that the worker's job title was intern. She worked approximately 34 hours per week. The worker performed administrative duties. When the worker filed for unemployment she stated she was forced to quit as the firm wanted her to give up her classes at school as they were interfering with the work at the firm. Unemployment ruled that the firm was not liable and did not force the worker to quit her job, therefore, she was unable to collect unemployment benefits. The firm feels that this shows the worker was an independent contractor.

## Analysis

The determination of the worker's status 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

A 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your business. 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. The worker received her assignments from the firm and reported to the firm when problems occurred. An example of direction on control was when the owner expressed that that worker needed to come in to work in the morning, instead of school, as her absence was causing problems for the firm.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. The worker personally performed her services as a representative of the firm. She followed the firm's instruction.

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. The worker had no investment in the firm's business, received an hourly rate, and could not suffer a loss.

The firm expressed that unemployment found the worker to have been an independent contractor. The unemployment office found that the worker would not collect unemployment as she quit, through no fault of the firm. This does not mean she was an independent contractor. Also the Internal Revenue Services makes determinations of work status for federal employment taxes only and findings may differ from other agencies.

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.

Firm: For further information please go to [www.irs.gov](http://www.irs.gov) Publication 4341