

**SS-8 Determination—Determination for Public Inspection**

Occupation OFF02.256 AdministrativeAssist	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**

Information provided indicated the firm is a psychology practice. The firm indicated the worker performed services in data entry, billing and filing and customer relations for tax years 2009 through 2017. The firm has requested a work classification to determine if the worker is an employee. Both parties agreed she was hired after a temp agency appointment. The firm indicated she had billing expertise, so no additional training was provided. The firm stated the worker provided services based upon skill in the area. Jobs were limited to contract at start of agreement. She reported to the firm owner if there were any issues or complaints. The firm indicated the worker established her own schedule. Services were performed on the firm premises at one location. The worker was required to perform her services personally. The firm indicated she had no authority to hire. The firm stated they provided the computer. The worker was paid by the hour. The customer paid the firm. Either could terminate the work relationship without incurring a penalty or liability. She was not prohibited from performing services for others. The firm stated she was represented as a contractor/business associate. The work relationship ended due to breach of contract and poor customer service. The firm provided a copy of the reports sent to the [REDACTED] Department of Labor and copies of the 1099-MISC Forms issued from 2009 through 2016.

The worker responded to our request for information on April 5, 2017. She agreed that when sent from the temp agency to perform services that company did issue a W-2. She was hired full time/permanent by the firm in October of 2009 (July through the agency). The worker indicated she had been provided training on how to submit claims electronically, patient scheduling, how to greet callers and conduct intern orientations. Work assignments were received verbally from Dr. [REDACTED] and [REDACTED], Business Director. The worker indicated her original title was that as a Medical Biller, later her duties added were front desk, medical records, collections, administrator, billing medical claims, scheduling appointments and collecting past due accounts. She provided daily/weekly charge reports, patient data reports, patient debt reports, and revenue reports. Her schedule was Monday through Friday from nine to five pm. Her daily routine was to bill claims first, schedule patient appointments, check voicemail, continue to greet patients and answer phones. Work was performed at the firm location, utilizing the firm's equipment and supplies. She was paid by the hour. The customer paid the firm. She indicated she was given paid vacations and holidays. Either could terminate the work relationship without incurring a penalty or liability. She agrees she was terminated by the firm.

**ANALYSIS**

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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.

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## Analysis

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We have applied the above law to the information submitted. 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.

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.

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 financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

### Conclusion

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. Documentation has been provided providing the firm represented her as a full time employee. The services were performed on a full time continuing basis, and not a onetime business transaction, as indicated by timesheets provided by the worker. The worker was given continuous pay increases and paid vacation time (also documentation provided), indicating an employer/employee work relationship.