

# SS-8 Determination—Determination for Public Inspection

Occupation OFF02.257 OfficeWorker	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 worker initiated the request for a determination of her work status as an office assistant having completed an application and interview process. The services were rendered in tax years 2014 and 2015 and she was issued Form 1099-MISC. The firm's business is described as a private firm specializing in direct investments in oil and gas assets.

The firm's response was signed by the AP manager. The firm's business is described as oil and gas. The worker performed office clerical services. The firm noted that there were limited records pertaining to the worker. The firm provided the following: the worker was contract clerical; she received her work assignments from the field office Ops manager; the field office manager determined the methods by which the worker's services were performed; the worker was required to contact the Ops manager with any problems or complaints that she encountered that required resolution; and, the services were rendered in the firm's field office 8 hours per day; the worker worked in the field office.

According to the worker she was given specific training and instructions as to how to invoice, how to count the barrels of oil, she directed as to what to fax, how to answer phones, how to clean, and how to shred documents; job tasks came from the firm's officer manager. The firm determined the methods by which the worker's services were performed with any problems or complaints encountered by the worker being directed to the firm (office manager and/or operations manager) for resolution. The services were rendered from 8 a.m to 5 p.m. on the firm's premises. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm provided the building, office space, computers, printers, scanner, and shredder. The worker furnished nothing; she did not lease equipment, space or facilities and she did not incur expenses in the performance of the job. The worker was given a template to use to track her hours, which she gave to the office manager, who at the end of the week input into the system. The worker was paid an hourly wage; the customers paid the firm.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker indicated that there was a Master Service Agreement; however, she did not have a copy.

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## Analysis

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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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, 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 was only given once at the beginning of the work relationship.

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.

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.

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.

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.

We have considered the information provided by both parties and have applied the above law to this work relationship. 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 and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

## 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.