

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

Occupation 02PDP Publishers/Editors/Producers	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 requested a determination of employment status for services performed for the firm in 2015 as a literary consultant. The firm responded to our request for information as follows:

The firm is in the business of the sale of used books, arts and antiques. The firm also publishes books about local artist and books for children. The firm stated that the worker was hired as a literary consultant that was responsible for the production and marketing of 2 books about local artist. The firm stated that the worker was an independent contractor because she compiled, collected, and edited material and coordinated publication of the books. she worked largely from home. The worker no written contract. The firm instructed the worker in the general goals for the production of 2 books. The firm and the worker communicated by email and brief meetings with the business owner for progress reports. The worker reported to the business manager with problems and then the owner if needed for resolution. The worker was required to submit book manuscripts and proofs for editing. The worker set her own schedule. She personally performed her services at home and at the firm's premises. If the worker needed helpers for book layout and publication, the worker hired the helpers with the approval of the firm and the firm paid the helpers. The firm provided a computer for the worker when in the office. The worker used her owner computer when working from home. The worker did not incur any expenses. She was paid an hourly rate. Customers paid the firm. The worker did not receive any benefits. Either party could have terminated without liability. The worker quit to take another job.

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## Analysis

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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.

Therefore, 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 was given general guidelines of what was expected. She reported to the firm with problems. The firm reviewed the work and had the final say concerning the product. Although the worker was given a lot of flexibility in her position; the firm maintained the right to exercise direction and control over the worker, even if they did not exercise that right.

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 performed her services directly for the firm and was not operating a business performing similar services.

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.

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