

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

Occupation 02REC Recruiters	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

**For IRS Use Only:**

**Facts of Case**

According to the information and documentation submitted, the firm's business is engaged in providing on-line business English lessons to clients. The worker provided services as a Teacher Training and Recruitment Coordinator. The worker was responsible for finding teachers, working with the firm to interview and hire them, and monitoring and mentoring their team of teachers. The firm reported the worker's earnings on Form 1099-MISC at year end.

The worker provided his services pursuant to a "Services Agreement – Teacher Training and Recruitment Coordinator". The agreement provided that the Coordinator is a professional who is to perform duties with diligence and professional courtesy. The agreement provided that the Coordinator to understand, be familiar with, and comply with the firm's rules, regulations, policies, and procedures. The firm and worker attended weekly meetings to discuss the firm's needs and challenges.

The agreement provided that the Coordinator will be responsible for finding, attracting, interviewing, and training teachers befitting the firm's mission in the number and at the times agreed upon with the firm. The worker incurred expenses for adverts on a social media site while providing his services; which were reimbursed by the firm. The agreement provided that the Coordinator would be responsible for maintaining professionalism and high quality among the firm's teachers throughout the duration of their work with the firm. If there were any problems that arose, the worker contacted the firm for resolution of the problems. Both parties discussed the problems and came up with solutions together; although the firm was ultimately responsible.

The agreement also provided that the Coordinator is to be paid each month for a determined amount of compensation. The agreement provided that the Coordinator is a subcontractor of the firm and is responsible for paying all applicable taxes. The agreement provided that the Coordinator shall not compete with the firm and may not work with the firm's partners, students belonging to the firm's partners, or the firm's teachers outside of the Coordinators contract and for six months after termination of the contract. The worker terminated his work relationship with the firm without incurring any liabilities.

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## Analysis

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According to the information and documentation submitted by the firm and the worker concerning the work relationship, the worker attended weekly meetings with the firm. The worker was required to understand, be familiar with, and comply with the firm's rules, regulations, policies, and procedures. If any problems or complaints arose, the worker was required to contact the firm. They discussed them and came up with solutions together; although the firm was ultimately responsible.

The worker incurred expenses while performing his services; which were reimbursed by the firm. The firm paid the worker a monthly salary for his services. The worker had no investment in facilities and did not have the opportunity for profit or loss. The worker was free to terminate his services without incurring any liabilities. The worker's services were integral to the services provided by the firm.

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.

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.

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.

If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.