

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

Occupation 03IEI.13 Inspector	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 submitted a request for a determination of worker status in regard to services performed for the firm from January 2013 to April 2013 as a clinical research associate. The work done by the worker included traveling to registry sites and auditing data in patient files to electronic data systems; preparing regulatory documentation for [REDACTED] approval. The firm issued the worker Form 1099-MISC for the year in question. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The firm's response states it is a clinical research support business. The worker provided audit support for studies and site support for data entry. The firm believes the worker was an independent contractor as she was contracted for three months and signed an independent contractor agreement.

The firm stated it provided the worker specific training and instruction related to how to document within its system. The worker was provided sites to support and was to engage the sites. The worker determined the methods by which assignment were performed within the firm's [REDACTED]. The firm's project director was contacted if problems or complaints arose. The project director was responsible for resolution. The firm required the worker to provide daily progress reports in order so that it could monitor her productivity to ensure she was earning her payment, in addition to time sheets. The worker was offered 40 hours per week to contact and support research sites. Services were performed at the firm's office and at research sites. The time spent at each location varied each week. Meetings were not required. The firm required the worker to personally perform services. The worker provided a copy of the firm's job offer letter dated November 26, 2012. Per the firm's company policy the worker was offered a three month contractor's position. This allowed the firm and worker time to ensure the position was a good fit for all parties. After the three month period the firm would perform a review. Upon a successful review and the worker's desire to pursue a full-time position within the firm, the worker would transition to a full-time employee. The worker stated the work performed was continuous and an integral part of the firm's business operation. The firm determined the methods by which services were performed. The worker performed services on a regularly scheduled basis, i.e. Monday - Friday; 8 am - 5 pm.

The firm stated it provided a laptop and cell phone. The worker provided all other necessary items. The worker did not lease equipment, space, or a facility. The firm reimbursed the worker for travel. The worker incurred the unreimbursed expense of internet. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The worker established the level of payment for the services provided. The worker stated she did not provide supplies, equipment, or materials. She did not incur expenses in performing services for the firm. The firm established the level of payment for the services provided.

Benefits were not made available to the worker. The work relationship could be terminated by either party without incurring liability or penalty. The firm stated it was unknown if the worker performed similar services for others or advertised; however, the worker was free to have done so. There was no agreement prohibiting competition between the parties. The firm represented the worker as a representative to its customers. The work relationship ended when the contract ended. The worker stated she did not perform similar services for others. The worker advertised with firm-provided business cards which advertised the firm's business. The firm represented her as an employee to its customers. Services were performed under the firm's business name. The work relationship ended when the worker was fired and told her contract was being terminated.

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## Analysis

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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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to a written 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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided training and instruction, required the worker to perform services as outlined in its standard operating policy, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm.

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. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement and as acknowledged by the firm, the worker did not incur economic loss or financial risk.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a trial, temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.