

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

Occupation 03MIS.44 MiscLaborServices	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 floral art company designed to make living sculptures at all price ranges. The worker performed services in production and facilities coordination. The services were performed from tax year 2011 through 2016, the firm reported the income on Form 1099-MISC. The firm indicated the agreement was verbal, but they have text messages that correspond, none were provided. The firm indicated minimal training was provided. He was hired for his knowledge he already had from other jobs worked. The firm would schedule workshops and provide shipping labels so that he may coordinate their production. The firm was responsible for resolving customer service issues. He was required to report the quantity of products shipped and made, workshops conducted and inventory of stock. The firm indicated his daily routine fluctuated based on the projects at hand. Meetings were occasionally held to update each other on what was transpiring. The firm indicated they provided the glass, stones, mosses, soils, packaging materials and labels. He provided his own tools, and often designed his own tools for more efficiency. Janitorial and maintenance equipment he kept at the assembly center, he also provided a cash register. The firm states [REDACTED] is represented as a man with many talents, who graces them with his various skills. The firm indicated the worker quit. He performed services until August 23, 2016.

The worker indicated the firm makes terrariums, ship terrariums. He stated he would teach some classes for the firm. He also did janitorial services such as cleaning the store, bathrooms, washed windows, and took out the trash. He also did packing and shipping of terrariums. He was shown how to make a terrarium and how to pack and ship them. The owners would give him a list of things to do via text or phone. The firm would resolve any issues that arose. He indicated he worked ten to five. All services were performed on the firm premises. He agreed occasional staff meetings were held. His services were performed personally. He had no authority to hire. The worker indicated the firm provided all equipment, materials and tools. He stated he was paid by the hour. The customer paid the firm. He was represented as an employee. He indicated he was forced to quit.

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.

**ANALYSIS**

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.

Integration of the worker’s services into the business operations generally shows that the worker is subject to direction and control. When the success

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**Analysis**

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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.

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.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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. All services were performed on the firm premises, or at such places as flowers shows, Javits Center, Renegade and Bust Markets, as scheduled by the firm. The firm scheduled all workshops, clients paid the firm to attend said workshops. The firm provided the materials and equipment for the services to be performed, and orders to be shipped. The worker had been paid by the hour, and reimbursed for cleaning, painting and maintenance supplies, indicating the worker was not in a position to incur a profit or suffer a financial loss. All services were performed under the firm's business name, not that of the worker.