

## SS-8 Determination—Determination for Public Inspection

Occupation

03TEC.3 Technician

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The worker requested a determination of employment status for services she performed for the firm in 2007 through part of 2012. The firm responded to our request for information. The firm is a non-profit, non0government agency that operates in [REDACTED] working with [REDACTED] to provide capacity development and technical assistance in areas regarding HIV and AIDS. The worker was initially engaged as a part-time consultant and then as the Program Country Director in [REDACTED].

The firm stated that the worker oversaw the firm's daily operations in [REDACTED]. She entered into a written agreement with the firm that was renewed each year. The worker was paid a daily rate, not a salary. She worked an average of 4 days a week. She did not have a daily work schedule in an office setting. The firm trained the worker in the firm's work plan for implementation. The consultant agreement laid out the job she was to perform. The worker determined her methods. If problems arose she was to report to the firm. The worker attended meetings for the firm to represent their program interest in [REDACTED]. The firm provided everything the worker needed. She provided her own cell phone. The firm paid for her travel and business expenses. The worker could not incur a risk of loss. Either party could have terminated without liability.

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## Analysis

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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. 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's responsibilities and the firm's expectations were laid out in her contract.

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. There was no evidence that the worker performed any services of an independent nature. She performed her services as a representative of the firm. 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.

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. The firm provided all the materials, equipment, and supplies the worker needed. The worker received a daily rate. The firm paid her expenses.

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. 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 a daily 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 go to [www.irs.gov](http://www.irs.gov) Publication 4341.