

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

Occupation 03TEC.9 Technician	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 municipal government entity, that operated a seasonal ceramic studio. The worker had been retained by the firm in 2013 as a ceramic studio lab technician. Her duties were to basically manage the studio, maintain, supervisor seasonal cleaning, loading/unloading kilns, prep work and clean up. The firm stated the worker contracted annually to perform the duties. The firm feels the position warranted treatment for those services as an independent contractor and reported the income on Form 1099-MISC. The services had to be performed satisfactory to the City, within a set time line. The worker was provided training from the current lab technician. She was provided training, on how to clean/organize tools, load & fire bisque, load & fire reduction, check and clear glaze/clay traps, fire gas kilns, mix and screen colored slip, load and fire bisque, load oxidation and reduction, fire oxidation/reduction gas kilns, recycle clay, observe glaze demonstration/classes, training and orientation with [REDACTED], research and submit respirator information and how to correctly prepare invoices. The work assignments were listed in the contract agreement. She referred complaints to the department's recreations supervisor. The firm indicated she provided invoicing. The firm indicated she determined her routine and schedule according to the department's park hours. Services were performed at the [REDACTED]. They indicated no meetings were required. Her services were to be performed personally. The firm provided the ceramic pieces, kiln and glazes. The worker was paid an agreement upon amount. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker had performed similar services for others. She was presented as a contractor. The city terminated the agreement.

The worker stated she was trained how to run kilns, mix glazes, how to maintain equipment, how to write orders, do inventory clean the studio and help visitors. Work assignments were given from city employed teachers, program participants, city staff, and 'scope of work' duties listed in the contract. [REDACTED], resolved any work issues. She stated she was to provide work logs. She indicated she worked Monday 10-4, Tuesday 8 am to whenever the kiln can be turned off, approximately 12 hours, Friday the day starts at 10. Services were performed on the firm premises. She indicated she was required to attend weekly reporting meetings with city staff as dictated by them, with threats of termination for not being a team player. Her services were to be performed personally. The firm provided all equipment, and supplies. Nothing was leased by the worker. She agreed she was paid a lump sum and the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was terminated for not being willing to go to work "between contracts" as the prior worker had done for years.

Both parties provided copies of the contracts, to include the scope of work duties and liability insurance the worker was required by the firm to get. The worker also provided a list of the janitorial tasks required, copies of daily instructions given by various members of the city staff, copies of hand written work/task logs.

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

-Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229. (An independent contractor means the worker already had the skills required, owned, operated and advertised her services to the general public. A true independent contractor would not have had to have been trained.)

-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.

-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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

-A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

-Payment by the hour 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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

-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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

## ANALYSIS

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 rat

## 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.