

**SS-8 Determination—Determination for Public Inspection**Occupation  
04FSC.42 OverseerDetermination:  
☒ Employee ☐ Contractor

UILC

Third Party Communication:  
☒ None ☐ Yes**Facts of Case**

The worker initiated the request for a determination of her work status as a lifestyle director in tax years 2008 through 2016. The firm's business is described as an apartment and real estate management company. In this capacity, she was required to promote the firm and the lifestyle the firm offers as a luxury property; she wrote for the website for 7 years and co-managed the [REDACTED] page; was required to submit monthly reports with details of the duties and breakdown of the budget she was given in advance and the number of attendees at each event; she was required to promote the firm's 'we care' philosophy and the luxury apartment lifestyle living; she hosted monthly events that required her to shop for, prepare, and serve food to the residents of the property. The worker indicated she was not issued Form 1099-MISC for the years in question.

The firm's response was signed by the president and COO. The firm's business is property management and related services, of multi-family real estate. The firm purchased the operating assets of the predecessor company in 2011. The role of the social activities director is to develop, enhance, and maintain an atmosphere of friendliness and camaraderie among residents at the property. The goal is to develop strong social bonds among resident tenants; the social director does so by hosting and encouraging participation at a variety of events at the property and by welcoming new residents and developing a sense of community. To help ensure success the social activity director is expected to be well-known on the property and to be responsive to resident needs and concerns regarding the operations of the property.

The worker responded that all details as to how she was to conduct herself were laid out in contract and annual addendum, as well as emails. Any problems or complaints encountered by the worker were directed to the firm's property manager or leasing agent for resolution. The worker's services were rendered 40-45 hours per month at the firm's location. The worker responded that she was required to perform the services personally; any additional personnel were hired and paid by the firm. The firm provided company letterhead paper, envelopes, stamps, postcards, ink, copier, fax, clubhouse, storage, and internet. The worker furnished a laptop, internet, kitchen/kitchen items. The worker did lease her apartment as a requirement of the position and received a rent reduction as compensation of her services. The worker was paid \$X in advance for the events hosted monthly to cover food and supplies; she was required to turn in receipts and a report. She indicated the firm established the level of payment for services provided or products sold. There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

The firm in responded that the social directors develop their own program of activities; there is simply an expectation that social directors will develop an atmosphere of camaraderie and friendliness to encourage resident renewal and the attraction of other residents. The social director is expected to host at least 2 events a month; the availability of funds is a negotiation between property manager and area manager. In compensating for the services of the social director, the firm offers 'reduced rent', which is a result of a negotiation with the manager and may be affected by the performance of the social director. The firm indicated the social activity director receives lodging at a price less than others would pay for lodging; the value of the lodging provided at a reduced rate is done so in consideration of services to be performed. The services of the social director are useful only if the social director maintains a frequent physical presence on the property. The services do not constitute a full-time occupation.

Lifestyle Director Program and the responsibilities of the lifestyle director throughout the month, include but are not limited to:

- Planning, coordinating, and implementing social events that appeal to a variety of residents, at a minimum of one a month;
- One event on the same day each month to create consistent attendance;
- Event calendars must be submitted and approved by the site staff by the 20th of each month for the upcoming month and event flyers and reminders are to be distributed by the lifestyle directory per management instructions;
- Within 7 days of a move in, the new resident will be contacted by the lifestyle director to personally invite the new resident to 'welcome night' which are held every two weeks, provide personal tours for new residents so they may familiarize themselves with the new hometown;
- Network with [REDACTED].
- Organize seasonal recreational events off-site, if possible;
- Resident birthday appreciation – leave a card and balloon during the week of the birthday;
- Responsible for updating social media tools such as [REDACTED], [REDACTED], and [REDACTED], weekly;
- The property manager is responsible for overseeing, reviewing, and evaluating the lifestyle directors invoices submitted each month; upon review the property manager will forward the invoice to the public relations manager for approval to determine whether the full credit was earned. The credit is an 'all or nothing';
- Compensation: based on size of the community and the number of lifestyle directors; compensation is a specific dollar amount or a percentage of the monthly rent, based on property size.

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## Analysis

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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.

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.

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. 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 was given a rent reduction as a requirement of living on the property.

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. In this case, the firm had the right to determine the budget as well as the rent reduction; the worker was not in a position to realize a profit or generate a financial loss in this work arrangement.

The firm's 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.

We have considered the information provided by both parties. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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.

## 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.