

# SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

**For IRS Use Only:**

## Facts of Case

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for completion of Form SS-8.

From the information provided the payer is a tax-exempt organization and post under IRC Section 501(c)(3) who provides support for [REDACTED] Programs. The payer also provides support to the local community such as assisting with the food pantry, [REDACTED] Hospital, little league, and civic organizations. The worker was engaged from 2014 to 2017 as a Post manager. The payer believes the worker was an independent contractor (IC) while performing services for them because the position was and continues to be a part-time position hired as an independent contractor. The payer provided a copy of the position description of a post manager.

The payer states they provided the worker with a written plan in regard to her services. The worker received board of director instructions and participated in open discussions with the payer. The worker received her assignments according to the written plan and the Board of Directors determined how she performed her services. The worker was required to personally perform her services at the payer's premises on an average of 20 hours per week. The worker was required to notify the Board of Directors if a problem or complaint arose for their resolution. The worker was required to provide verbal periodic updates and vendor invoices and work orders to the payer. The worker attended Board of Director meetings as required.

The payer provided a computer, printer, and paper to the worker in order to perform her services. The worker did not incur expenses, she was compensated on a salary basis, and the Board of Directors established the level of payment for the services provided. The worker did not have an opportunity to incur a loss or realize a profit as a result of her services.

The worker was eligible for paid vacation leave after one year of service. The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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As in this case and 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, the worker did not receive training from the payer. The payer's Board of Directors did however, outline her tasks and responsibilities and her services were reviewed on a quarterly basis. The payer's Board of Directors determined how the worker performed her services. The worker provided her services on behalf of and under payer's organization's name rather than an entity of her own. The payer was responsible for the quality of the work performed by the worker and for administering the organization's program and civic activities. These factors gave the payer the right to direct and control the worker and her services in order to protect their financial investment, the reputation of their organization, and their relationship with their community and their clients.

The payer's statement that the worker performed services on a part-time basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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 the operation of the payer's Post. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a entity has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement or the filing of a Form W-9), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

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, co-adventurer, agent, or independent contractor must be disregarded. 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.

Based on the above analysis, we conclude that the payer 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.