

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

Occupation 04MAN.57 Manager	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**

The firm is in the business of providing teaching services for English as a second language. The individual provided his services for the firm for the years 2013 through 2014 as a manager and the monies he received for the services he provided were reported on Forms 1099-MISC.

The worker was hired after being referred for the position. The firm stated there was a verbal agreement that the worker's main responsibility was to manage the teachers. The worker stated he received instruction and training on how to determine and make adjustments to pay, how to complete business documents, what to purchase, and what to offer for outside contracts. The worker stated he received his work assignments from the director through the company interpreter. The director of the firm determined the methods in which the assignments were performed. The worker stated he provided these services from 7:00 AM to 1:30 PM. His responsibilities included: providing student testing, relaying through skype teacher information, writing evaluation reports, resolving technical issues for teachers, processing payrolls, purchasing supplies, writing instructions and training for teachers on various company policies and requirements, and holding two monthly teacher meetings. He was required to provide these services on the firm's premises and he provided these services personally.

The firm stated that the worker did not receive specific training and his assignments were self-assigned. They stated that he determined his own hours based on his communication with the teachers. The firm maintained that the worker agreed to be treated as an independent contractor. Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual facts of the working relationship between the parties for Federal employment tax purposes.

The firm provided the worker with all the necessary supplies and equipment the worker needed to provide his services. The firm provided the office location and supplies, utilities, projectors, internet service, special [REDACTED] telephone with log in and a password. The worker provided his laptop and diagnostic tools. The worker did not need to purchase or lease any significant equipment used in providing his services. The worker maintained that the firm determined the level of payment and the firm's clients paid the firm directly. He received commissions.

The worker stated he did not advertise his services to maintain a business of a similar nature while providing his services for the firm. The firm advertised for teachers and homestay families. The worker was soliciting and offering business contracts to local schools, camps and homestay families. All contracts were negotiated for the firm and the firm's clients with the firm's name indicated and he was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker was terminated.

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**Analysis**

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The worker had the skills necessary to provide his services. 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 or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided his services.

The firm instructed the worker regarding the performance of his services. A worker who is required to comply with another person's instructions about when, where, and how he 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 fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments.

The worker rendered his services personally. 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. The worker provided his services under the firm's supervision.

The worker provided services for the firm in the firm's name and did not perform his services in the name of his own business. He did not have a financial investment in the firm's business and could not have incurred a business profit or business loss. The worker provided his services under the firm's name, for the firm's clients, and his work was integrated into the firm's business. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.