

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

Occupation 04MAN.118 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**

Information provided indicated the firm is an investment property business. The worker performed property management services, handled tenant inquiries and property tours. Services were performed for tax years 2014 through 2015. The firm feels the worker was an independent contractor as he performed his services unsupervised, short term until full time staff could be hired. The firm indicated no specific training was given. General information regarding the building and tenants was provided. No specific work assignments were given. The worker would provide information to ownership regarding tenant leases and general property matters. The worker would contact the firm or their accountant if the tenant had financial questions to resolve. He was to be available between the hours of nine am to five pm to meet with tenants. His daily schedule was otherwise determined by himself. The firm stated he was paid a flat rate per verbal agreement. The tenants paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as the property manager for the [REDACTED]. The firm indicated the worker terminated the work relationship.

The worker agreed his service title was that as Property Manager, he oversaw day to day operations at the [REDACTED] building, to include reception & Office services for renters, billing & collection of rent, coordination of maintenance tasks. He stated he had specific hours 9 am to 5pm using the firm's office equipment. He did not solicit the same service to other firms. Training was provided by his predecessor giving him an overview of the day to day operations in [REDACTED]. Some additional tasks were given by the owners of the firm. Work assignments were given via weekly calls from the owners. He provided verbal reports to the owners. Services were provided at the firm's property locations. He was required to perform his services personally. The worker could hire, after approval of the firm. The firm paid everyone. The firm provided the equipment, office supplies, and parking pass. He was paid on salary. The tenants paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was a representative of the firm. He voluntarily terminated the employment.

Analysis..

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.

continued...

---

## 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. 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. 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.

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 the office space, supplies and equipment. The worker was paid a set amount for the work performed, indicating no opportunity for profit or loss. His responsibility as property manager, was to show apartments, and collect rents due. Indicating financial stability for the firm's investment, not the worker.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## 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.