

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

Occupation 04OPC Curator	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**

The firm is a limited liability company that operates a museum. The firm engaged the worker as a curator. There was a written agreement between the two parties. The worker filled out an application for the position.

The worker stated he got all of his instructions from the firm and the firm stated the worker did not receive any training. The worker received his assignments from the firm and the firm determined how those assignments should be performed. The worker ultimately relied upon the firm to resolve his problems and complaints. The worker was required to give the firm weekly status reports. The worker had a regular schedule from 9:30 a. m. to 5:30 p. m. The worker performed his services basically at the firm's location. The worker was required to attend meetings. The worker was required to perform his service personally.

The firm provided the location, office supplies and equipment and the items needed to keep the museum open. The worker was reimbursed mileage for long distant trips. The worker received both salary and commission. The customers paid the firm directly for the services they received. The worker stated the firm established the level of payment for the services provided and the firm stated the amount was on mutual agreement.

The worker received paid vacations and holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker stated he was represented as an employee and the firm stated the worker was represented as their curator. The work relationship ended as the firm did not pay the worker.

The worker provided a copy of the "Curator Consultant Agreement" which included the following:  
The worker was to consult with the officers and employees regarding management and organization of the company.

The duties were listed as follows:

- Develop relationships with interior designers, architects, galleries, collectors, museums and any other potential markets
  - Use the [redacted] software to present, inventory and track inventory
  - Learn the artifacts place of origin, tribal use and other relevant information necessary to sell the artifacts
  - Produce weekly and monthly status reports with leads and status information
  - Supervise staff and volunteers
  - Membership: Expand and retain member base through innovative strategies
  - Supervise membership administration
  - Attend programs and special events
  - Supervise all media relations, publications, and communications functions
  - Work with Board of Directors
  - Oversee concerts, events and workshops
  - Public Speaking
  - Community Relations
  - Assist with the design of all collateral
  - Involved in new acquisitions for the collection
  - Cataloging collection
  - Care of objects
  - Curatorial duties
  - Overall gallery operations
- The worker was to spend a minimum of 176 hours per month to fulfill his obligations.  
The worker would be paid \$3,750/month and the percentage of commission he would receive when sales were made.

The worker would receive two weeks paid vacation and all federal holidays.

The worker provided a copy of his business card which listed him as a director/curator under the firm's business name.

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## Analysis

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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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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. In the instant case, the worker performed services as a curator for the museum as instructed by the firm which showed the worker's services was integrated into the firm's daily operation of their museum.

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. In the instant case, the worker was required to fill out an application and to provide his service personally. This demonstrated the firm was interested in the methods used as well as the end result as an employer. Control was further demonstrated by the firm setting the workers hours and the amount of hours he was required to perform monthly.

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. In the instant case, the firm provided the museum, the artifacts and the office equipment and supplies the worker needed which demonstrated the firm had the financial investment needed for the worker to perform his service.

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. In the instant case, the worker could not suffer a significant loss as operating their own business.

The worker was an employee according to common law. The information provided by both parties showed the firm did control the worker by outlining all of the duties the worker was required to perform. Control was also shown when the firm required the worker to perform a specific amount of hours each week. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as the end results as an employer. Financial control was demonstrated by the firm setting the worker's monthly salary and the rate of commission the worker would receive on sales. It was the firm that had the financial investment as the firm provided the worker with the location and all objects needed for the museum to be open. The worker's service as a curator was integrated into the firm's daily operation of their museum.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989