

# SS-8 Determination—Determination for Public Inspection

Occupation 05FIW Bartender	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 restaurant during the day and a lounge in the evening. The firm engaged the worker as a bartender. The firm interviewed with the bar manager for the position and filled out an application. The firm and worker disagreed upon the services the worker performed as the firm stated the worker was a promoter. The worker provided evidence he performed services as a bartender.

The worker stated he received one day of training on how to perform his services. The worker stated he received his assignments either by e-mail or from the bar owner while the firm stated they did not give the worker his assignments. The worker relied upon the firm to resolve his problems and complaints. The worker stated he was required to report his end of the day cash and tips. The worker stated he performed services 4 days a week from 8-10 hrs. per day. The firm stated there was no set schedule for the worker. The worker stated he performed his services at the firm's location. The firm stated the worker's services were performed at various locations. The worker stated he was required to attend staff meetings. The worker stated he was required to perform his services personally and the firm stated he was not required to perform his services personally.

The firm provided the location. The worker stated he was paid hourly and the firm stated he was paid on a commission basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The firm stated the worker performed similar services for others and the worker stated he only performed services for the firm. The worker performed his services under the firm's business name. The worker terminated his services from the firm.

The worker provided me with several copies of e-mails from the firm to him setting his weekly schedule.

The worker also provided copies of schedules listing the times the worker would begin working and listing his position as a bartender.

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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.

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. In the instant case, the worker did receive instructions on the first day he performed his services.

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 bar tender under the firm's business restaurant/lounge name which demonstrated the worker's services were integrated into the firm's daily operations.

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. In the instant case, the worker did provide evidence showing the firm set the worker's weekly schedule as an employer.

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. 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. In the instant case, the worker did not have a significant investment to provide his services.

The worker was an employee according to common law. The information provided by both parties showed the worker did perform services as a bartender. The worker performed his services at the firm's location while the firm provided the worker with everything he needed to perform his services. Control by the firm was shown by the firm setting the worker's weekly schedule. The worker did not have a significant investment to perform his services and could not suffer a significant loss as a business owner. The fact the worker performed services as a bartender for the firm's lounge demonstrated the worker's services were integrated into the firm's daily operations.

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