

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

Occupation 05ITE Instructor/Teacher	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 provides educational services to students in grades Pre-K through 12. The worker was engaged on a 90-day temporary basis to perform services as an instructor for the two year old age group. The firm indicated once the 90 days trial expired, it would then decide to either offer or not offer a teaching position to an instructor. The worker in this case terminated her services during the 90-day period. The firm considered her services to have been performed in the capacity of an independent contractor, and issued to her a Form 1099-MISC at year-end to report the monies she received for her services as non-employee compensation.

The firm assigned a classroom to the worker and provided instructions to her on what needed to be done. The worker was allowed to use her own work methods within the firm's basic guidelines. She was required to report problems and complaints to the firm for resolution purposes. The worker performed her services at the firm's location. She was not required to perform her services personally. Helpers/subs would have been engaged by the firm, and paid by the firm for their services. The worker was not required to provide the firm with work related reports, and was not required to attend staff meetings.

The firm provided the classroom facilities, equipment, tools, and supplies needed to perform the services. The worker provided any specialty supplies, her own lesson plans, and curriculum. The worker did not incur work related expenses, nor did she incur economic loss or financial risks related to the services she performed for the firm. The firm paid the worker on an hourly wage basis for her services.

The firm covered the worker under workers' compensation insurance. There was no information provided to support that employment benefits were made available to the worker. There was no information provided in this case to support that the worker performed similar services for others, or that she personally advertised her services to others while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities.

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**Analysis**

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The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)