

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

Occupation 05ITE Instructor	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 emergency medical technician training. The worker was an EMT instructor. He received a Form 1099-MISC for 2016 and 2017 for his services; he continued to work in 2018 as well. There was a written agreement.

The worker noted that instructions were provided by the firm via mandatory meetings and site visit with instructor review. Both parties agreed that the worker received his work assignments via a contract. The worker noted that classes were scheduled by the firm's main office. The worker noted that the firm's direct supervisor determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker submitted required state reports and incident reports. Both parties agreed that the worker worked set scheduled hours and days at the firm's location. There were required meetings to attend. The worker noted that he was required to provide the services personally. Both parties agreed that the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided all the medical equipment, the facility and all course materials. The worker incurred the expense of professional liability insurance. The worker was paid per contract for services; worker noted that he received a salary. The customer paid the firm. The firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. The firm could file an injunction if the worker left prior to contract fulfillment. The worker did not perform similar services for others; the firm did not know. There was a six month non-compete agreement. The relationship has ended.

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## Analysis

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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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker instructions via the contract, meetings, site visits, and the procedural manual. 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. The fact that the worker worked according to the firm's set scheduled hours and worked at the firm's location were also elements illustrating the control that the firm had over the worker's behavior. In addition, the worker's services were continuous throughout the years involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 had the investment in the facility and equipment. The worker received a set weekly amount and had no other economic risk as he had no significant investment. 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. The worker received a set weekly amount and had no other economic risk other than the loss of that compensation. 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.

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. There were no benefits and there was a written agreement. The firm's belief 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 worker was engaged as an instructor for the firm's training programs. When doing so, the worker was not engaged in a separate business venture. In fact, he was restricted from doing so by the non-compete agreement. 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 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 see Publication 4341 for guidance and instructions for firm compliance.