

## SS-8 Determination—Determination for Public Inspection

Occupation

05ITE Instructors/Teachers

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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 private school. The worker was engaged by the firm as a substitute teacher. The firm reported the worker's remuneration on Form 1099-MISC for 2017.

Information from the parties supports that the worker obtained her job through an application process. The school did not make benefits available to the worker. It relied upon the worker's prior training and experience to perform her services. The school provided the worker with her work assignments. If problems or complaints occurred, the worker contacted the school for resolution. The school paid the worker at a daily rate. The worker followed the schedule set by the school. She performed her services on the school's premises. The worker attended department and faculty meetings. She was required to perform her services personally.

The school provided the classroom supplies, learning materials, and the property. The worker did not incur expenses in the performance of her services. The school paid the worker at a daily rate. It did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation. The work relationship ended at the agreed upon date.

---

## Analysis

---

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the school relied upon the worker's prior training and experience to perform her services. 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 school was responsible for resolving any problems or complaints that may have occurred, showing the school retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker performed services on a temporary basis, based on the school's need. Both employees and independent contractors can perform services when the needs of a business warrants. The worker was required to perform her services personally, meaning that she could not engage and pay others to perform services for the school on her behalf. 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. These facts show that the school retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 school paid the worker at an daily rate. Payment by the day generally points to an employer-employee relationship. These facts show that the school retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were 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 as a substitute teacher were a necessary and integral part of the function of the school's business. 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 business. These facts show that the school retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the school 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.