

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

Occupation 05ITE Instructors/Teachers	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 worker initiated the request for a determination of her work status as a violin instructor in tax years 2012 to 2018, for which she received Form 1099-MISC. She provided violin lessons to students recruited by and scheduled by the firm. The firm's business is described as a music academy providing private as well as group lessons.

The firm's response was signed by the director. The firm's business is music instruction to the general public in private and group lesson settings. The worker provided services as a violin teacher.

The firm and worker concur that there was no specific training and instructions given to the worker. The job assignments were a result of a client calling in and the firm assigning/offering the students. The worker determined the methods by which the services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises; and, as noted by the worker she was rendering her services Monday through Thursday between 3:30 and 9:00 pm depending on the number of students and which half hour slots were filled. The worker stated she was required to perform the services personally; and, any additional personnel were hired and paid by the firm. The firm indicated she was not required to perform the services personally; any additional personnel/substitute required background check and the firm's approval.

The worker stated the firm provided a piano, sheet music, and the facility. The worker furnished her violin. The firm responded that the firm provided the room in which to teach and the worker furnished her instrument and music. Both parties agree that the worker did not lease equipment, space, or a facility. The worker was paid \$XX/ half hour lesson. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for services provided.

The firm and worker acknowledge there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm responded the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker stated she had to register her name under the overall business registration of the firm. The firm indicated the worker was prohibited from taking students of the academy for one year. The worker, represented as a teacher, resigned her position.

The worker provided a copy of an email from the firm in which the firm outlines existing policies and expectations of its teachers. Excerpt: Teachers should arrive ten minutes prior to their first scheduled class. Teachers are considered late if they are not present, prepared, and in their classroom ready to begin instruction at their scheduled time. This will provide the teacher ample time to prepare for their lesson and begin the class on time. • Teachers need to be mindful of lesson start and end time and start all scheduled lessons on time. Running over with one student is not allowed as it takes time away from the next scheduled student. • Students are not to be left unattended during their scheduled lesson. If you need to leave class for a bathroom break, please let the front desk know so that the students can be supervised during that time. Teacher prep (lessons, meals, drinks, etc.) should not take place during scheduled lesson time.

The worker firm provided a copy of the contract. Excerpts: Instructor shall provide music instruction to Academy's students at the skill levels of the highest standards and professionalism required for such services in the YYY Area. Instructor shall provide independent expertise and shall exercise independent judgment as to the services provided, and shall provide the services at the locations, as determined by Academy. Academy shall not supervise either the means or the manner of Instructor's performance of services; but shall evaluate the results thereof. Academy shall provide Instructor with classrooms and limited. support services during Instructor's services on Academy's premises. Instructor agrees to teach according to a schedule mostly of his/her own design, generally from September through June. Summer schedules are negotiable, depending on Academy's then-current needs. Instructor will comply with all rules, regulations, policies and procedures of Academy, as may be amended from time to time by Academy. Instructor will represent Academy with a friendly, professional approach and appearance. Instructor's attire shall be clean and professional at all times. Instructor may maintain teaching schedules outside of Academy provided that such schedules do not conflict with that of Academy's. Instructor shall not solicit, recruit or retain any Academy students for a period of one (1) year after the termination of this Agreement or termination of Instructor's relationship with Academy for any reason.

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## Analysis

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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.

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.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's 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.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

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 [www.irs.gov](http://www.irs.gov) for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.