

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

Occupation 05ITE 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 worker stated she received instruction at teacher orientation before school started, in addition to regular guidance and monthly faculty meetings. The firm stated they believed the worker created her own lessons, however the worker disagreed and responded that assignments were made by the Head of the school, the parties agreed that the Headmaster of the school determined the methods in which these assignments were performed. Additionally, if problems or complaints were to arise the Headmaster was to be contacted for resolution. The worker stated she was responsible for grade assessments, creating lesson plans, attendance reports and student progress reports. The worker's daily routine consisted of arriving at 7:45 am conducting classes, lunch, closing exercises and supervision of detention at 4:00pm. The worker performed these services personally, 100% of the time at the firm's premises. If substitutes or helpers were needed, the worker responded it was the responsibility of the Head of school to hire and pay them. The worker stated the firm provided the building, cleaning supplies and furnishings, while she provided an office, teaching supplies, pens, pencils markers and paper. The parties agreed that the worker did not lease equipment or a facility. The worker stated her expenses were classroom and teaching supplies. The worker stated she received a salary, however the firm stated she received pay that was contract based. The parties agreed that the worker was not allowed a drawing account for advances. They both agreed that the customer's paid the firm and that the level of payment was established by the firm. The worker stated she would not suffer an economic loss or financial risk other than not qualifying for unemployment benefits or workmen's compensation. The worker stated the benefits available to her were paid vacations, sick pay, and paid holidays. Both parties agreed that the work relationship could have been terminated by either party without incurring a liability or penalty. The worker performed these services personally. The parties differed on how the work relationship ended, the worker stated the firm enacted a reduction in force and dismissed all faculty, however the firm stated the school closed.

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**Analysis**

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While there are minor inconsistencies in the facts presented, there are sufficient details agreed to by the parties to render a common law determination. Based on the application of the three categories of evidence, the worker in this case was under the direction and control of the firm to the extent necessary to meet the firm's business objective. The fact that a worker performed her services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. The worker's service was integral to the firm's business operation. The worker performed personal services on a continuous basis. The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The firm provided all significant materials to the worker. Thus, she did not have a have significant financial investment in the firm's materials. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor.