

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.6 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

According to the information and documentation submitted, the firm is a private academic school. The worker performed services as an instructor to teach music appreciation classes, which included listening and discussing music as well as performing in class ensemble. The firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with his assignments as outlined on a syllabus. If the worker had any problems or complaints, he could consult with his direct supervisor. The worker personally performed his services at the firm's premises according to the school's schedule and to fit within its student's schedules.

The firm provided the necessary classroom space, musical equipment, and school supplies for the worker to perform his services. The firm paid the worker an hourly wage for his services. The worker had no investment in facilities or a business providing music instruction. The firm terminated the worker's services after the end of the fall semester without incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the firm provided the worker with his teaching assignment. If the worker had any problems or complaints, he could consult with his direct supervisor. The worker personally performed his services at the firm's premises according to an established school schedule.

The firm provided the necessary classroom space, musical equipment, and school supplies for the worker to perform his services. The firm paid the worker an hourly wage for his services. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the worker's services without incurring any liabilities. The worker's services providing the music appreciation class was integral to the educational services provided by the firm.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.