

# SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.55 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

## Facts of Case

The firm is in the business of providing online classes to students in both schools and home school settings. The worker was engaged as a teacher and eventually as a lead teacher as well. She received a Form 1099-MISC for her services for the years of 2008 through 2014. There was a written agreement.

The firm indicated that was some training in the use of technology; however the worker noted that she was instructed in all aspects of classroom instruction. All sections of classes, even with different teachers, must teach the same content on the same day, and give the same assignments. The same exams and quizzes were given at the same time and were uploaded to the classrooms by the firm. The firm set the hours of work, days, times, and required regular reports; she could not work for another online school. The firm indicated that the teachers were offered classes; each would propose what they would teach and would be approved by the firm. The worker noted she received her work assignments via email, teacher meetings, and through the teacher's manual. Each party indicated that the other determined the methods by which the assignments were performed but agreed that the firm would be contacted if any problems or issues arose. The firm noted that the worker would submit grades onto an online learning management system; the worker noted that she submitted weekly checklists and year-end checklists. During her most recent year, her routine consisted of teaching four sections as well as an hour each day for preparation, an hour for evaluation and an hour to handle communication. She also reviewed classrooms and archives of teachers under her supervision and completed evaluation forms. The firm noted that schedules were negotiated with the administration; each class was ninety minutes long, twice weekly and the worker chose when to grade, prep and correspond. Both agreed that the worker worked from home. Both agreed that there were monthly teacher meetings. The worker was required to provide the services personally although the firm noted that she could hire others to grade. The firm handled the substitutes; however, the firm noted that the sub would need to be approved by firm and would be paid by the firm for two times only.

Both the firm and the worker agreed that the firm provided the online classroom/platform, learning management system, and books; the worker also included the syllabus, tests and digital scribe. Both parties agreed that the worker provided the computer, and internet connections along with the workspace, other equipment and phone. The worker mentioned that she incurred expenses for her cell phone, computer, internet charges, and office supplies for which she was not reimbursed. The firm noted that it reimbursed Math and Biology teachers for specific items. Both agreed that the worker was paid by the firm based on the number of paying students enrolled in a class. Both agreed that the customer paid the firm. Both also agreed that the firm established the level of payment for services.

The worker mentioned that there was sick pay; the firm mentioned two free classes for a teacher's child/grandchild for a single class taught. Both agreed that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. Both parties agreed that the worker could not teach for another online school. The worker was free to recruit/advertise on social media on behalf of the firm. Both provided materials to teach but the firm approved and defined the parameters. The relationship ended when the worker no longer renewed her contract.

Some of the written agreements governing the work relationship were provided as well as the accompanying exhibits. Also provided was a Teacher's Manual for 2013 and 2014 which included compensation and benefits along with a teacher's responsibilities and expectations. Classroom procedures including orientation day and how to conduct a typical class provided guidance on these issues. A special section was devoted to the Live Online classes and how to conduct the sessions and address issues.

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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 with instructions and her assigned duties. She received a teacher's manual that provided information regarding procedures such as how to conduct a typical class and how to conduct a live online class. She performed her services according to the firm's scheduled work hours and days. 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. In addition, the worker provided her services on a continuous basis throughout the time period 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. While this was not a typical teaching situation in which the teacher provided services to the students in the firm's facilities, the firm did provide the teaching environment of the live online classroom platform. The students enrolled with the firm for specific classes, the worker was offered and accepted teaching assignments. She was then expected to adhere to the scheduled days and times for the classes. She worked from her home but the items that she utilized most likely could be found in many workers' homes, whether employees or self-employed. The worker could make more or less money depending on the number of classes she taught, but had no significant investment on which to incur a profit or loss.

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 minimal benefits of two sick days, and there were written agreements. However, 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 a teacher for the firm's online instructional business. She was not engaged in an independent enterprise; in fact, she was not allowed to perform similar services for other online classroom teaching sites. But instead, her services were essential and integral to the firm's continuing online operations. 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.