

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

Occupation 05ITE.56 Instructor/Teacher	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

Information provided indicated the firm is an education company owned and operated by educators who have multiple years of experience working with children, through community outreach programs. The firm requested a work classification determination to determine the correct status of substitute teachers they place with various schools, parents who are homeschooling etc., as the Arizona Department of labor was challenging the classification of the independent workers, who perform services as substitute teachers. The firm has been reporting income paid to the substitute teachers on Form 1099-MISC, as independent contractors. The work assignments are given through e-mail notifications. If there were issues the worker would have reported to the principal at the school where they were teaching. The worker(s) would have to provide proof of licensing, proof of IVP fingerprinting and requirements of State of AZ. The work schedule varied with each assignment. Services are performed at school locations. The workers provide their own pens, pencils and teaching supplies. The clients provide the classroom and students. The workers are paid \$100 per day. The customer pays the firm. The firm acts as a paying agent for the school. No benefits are paid by the firm. Either party could terminate the work relationship without incurring a penalty or liability. There was a non -compete clause in the contract. They are represented as contractors under their own name. The firm stated the contract terminated (for the person listed on the SS-8) for filing false claim for unemployment compensation.

The firm’s web page states: They understand how stressful it is for schools to provide a variety of services and programs on a limited budget. It is equally as taxing for home schooling parents to ensure their child(ren) a quality educational experience on a fixed income. Therefore, “we provide quality services to schools and the public at a reasonable price. “ It also lists the services the firm has available.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

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## Analysis

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We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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. In the instant case, the firm is in business to provide substitute teaching services to their clients. The firm obtains the clients, their website lists the services they provide, the firm determines the rates charged. A worker is free to accept or decline a work assignment, once accepted those services are performed under the firm's business name. The workers are licensed teachers, therefore would not have to be "instructed" on how to perform their services.