

# SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.59 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 contracts with hospitals to coordinate their staff educational needs for continuing education courses and certification classes. The individual provided her services for the firm as an instructor for the years 2012 through 2013 and the monies she received for the services she provided were reported on Forms 1099-MISC. The worker received initial instruction and had the skills necessary to provide her services. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided her services.

The firm instructed the worker regarding the performance of her services. A worker who is required to comply with another person's instructions about when, where, and how she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are

The worker was hired after completing a job application. The worker stated there was an orientation which included a mandatory initiation fee that covered the cost of the orientation, skills matrix, background investigation and equipment rental. The firm performed a skills assessment which produced a computerized matrix of classes that matched the worker's licensure, certification and qualifications to teach the classes. The worker stated she selected the assignments from the firm's list of classes and the firm determined the methods in which the assignments were provided. The firm stated that the worker put in bids per job according to her qualifications. There was an assigned education coordinator for each teaching location. If any problems or complaints arose as a result of the worker's services, the coordinator was responsible for problem resolution. All class participants were required to complete class/instructor evaluation forms. The worker was required to submit the invoices for instruction services, rosters and evaluation forms within a specified time frame. When providing services for the firm, she was required to follow a dress code and she was required to arrive at the teaching location fifteen minutes prior to class time. These services were provided on the firm's clients' locations and she stated she provided these services personally. There was a mandatory annual update meeting with a required additional fee. She indicated that she did not hire substitutes or helpers. If substitutes or helpers were needed, it was the firm's responsibility to hire and compensate the helpers.

The firm stated that the worker indicated that she was an independent instructor on her job resume and agreed to be treated as such. The firm stated that the worker was free to select classes according to her availability and needs and provided these services on a part time basis. They indicated that if substitutes or helpers were needed she was free to hire and compensate the helpers under the condition that they met the firm's criteria and that she received authorization from the firm.

The firm believed the worker to be an independent contractor, and stated there was a contract describing the terms and conditions of the relationship. However, for Federal employment tax purposes, it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties.

The firm provided the supplies and materials necessary for the worker to provide her services. The worker stated that the firm provided the worker with the class roster, course outline, student syllabus, power point presentations, class/instructor evaluation forms, projector and mannequins. The worker did not need to purchase or lease significant equipment necessary in order for her to provide her services. The firm stated that the worker used her own equipment. The firm indicated that the instructors were permitted to borrow equipment if needed and available. The worker stated she provided her own transportation, parking fees and proper dress attire. She stated she was reimbursed for mileage above the fifty mile radius from her home location. The firm stated that they did not reimburse the worker for any business related expenses. The worker stated that the firm determined the level of payment and the firm's clients paid the firm directly. The worker received an hourly wage for the services she provided.

The firm stated the worker signed a contract when she was hired. Both the firm and the worker maintained that she was providing services for others while providing her services for the firm. All work produced by the worker was returned to the firm and was property of the firm. The firm and the worker stated she received a company badge to enter and exit the firm's clients' premises. The firm stated the worker received the badge to facilitate the process and to indicate that she had clearance from the firm. The worker provided her services under the firm's business name and she was represented as the firm's employee. Either party retained the right to terminate the work relationship without incurring penalty or liability; in fa

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**Analysis**

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The worker received initial instruction and had the skills necessary to provide her services. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided her services.

The firm instructed the worker regarding the performance of her services. A worker who is required to comply with another person's instructions about when, where, and how 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments.

The worker rendered her services personally. 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. The worker provided her services under the firm's supervision.

The firm stated that the worker provided similar services for others and indicated that she was an independent instructor on her job website and believed her to be an independent contractor. The worker provided services for the firm based on availability. It is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. She did not have a financial investment in the firm's business and could not have incurred a business profit or business loss. The worker provided her services under the firm's name, for the firm's clients, and her work was integrated into the firm's business. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.