

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

Occupation 05ITE.64 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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a dance studio and the worker was engaged as a dance instructor. The worker provided dance instruction services on the firm's behalf and for the firm's clients and she provided private lessons on her own behalf. This determination will only decide the employment tax status of services performed by the worker for the firm's behalf.

The firm states the worker was hired because of her prior dance training experiences and she used those experiences in her work as she chose. The worker told the firm what she wanted to work for the season and they followed that unless she changed it. The firm states the worker determined how she performed her services and she was to resolve all customer problems; she could discuss the problems with them. The worker was not required to submit reports or attend meetings. The worker taught children dance after school hours; Mondays, Tuesdays, Thursdays, Fridays, and Saturdays. She occasionally wrote receipts for payments. The worker performed her services on the firm's premises and the worker did not lease a space. The firm states the worker was responsible for finding a replacement and they were responsible for paying this replacement.

The firm provided the stereo equipment to the worker in order to perform her services and the worker provided the music, clothing, shoes, phone or laptop to play music. The clients paid the firm for services rendered by the worker and the firm paid the worker at an hourly rate. The firm reported the worker's earnings on Forms 1099-MISC. The firm states the worker could incur a loss due to her laptop being damaged in a room of children dancing or in transportation back and forth on a regular basis.

The worker was not eligible for employee benefits. The worker was represented as a teacher/contractor under the firm's business name. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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's services were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.