

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

Occupation 05MPR Ministers/Priests	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**

The firm in this case is a church and is designated as a 501 (c) 3 non-profit organization, exempt from FUTA. The worker is the senior pastor. There is no indication the worker filed Form 4361 and has been granted relief from SECA.

The church's financial secretary initiated the request for a determination of the worker's status as a pastor in tax years 2018 to the present (2021). According to the church, the worker organizes and regularly leads both bible classes and church services every week as the appointed spiritual leader of the congregation. Specific functions within the church, such as Sacreotal administration of communion, are reserved for this worker. Additional duties include planning and leading fellowship events with various age groups, teaching intermittent and scheduled classes of a religious nature, as well as purchasing supplies as needed for the organization. Organizationally, he sets and implements short and long term plans related to evangelistic outreach, congregational development, and provides vision and leadership. As a pastor within a national denominational organization, he is expected to attend and when necessary conduct regular meetings with other pastors, professors, and leaders of affiliated church organization.

The church and the pastor agree that he was not given specific training or instructions, since he is a fully trained and qualified pastor with duties that include preparing, conducting, and creating worship services, Bible Studies, and other events. The congregation and the council (church board of elders and board of trustees) determine the methods by which the worker's services are performed. Any problems or complaints encountered by the worker are directed to the board of Elders and Trustees (together, the council) for resolution; but, both the pastor and council are accountable to the congregation. The worker is granted a significant degree of flexibility in setting and carrying out work assignments within confines of the church constitution, as he is tasked with leading the congregation. The pastor's services are generally rendered about 20 hours weekly at the church, 20 hours at his home, 14 hours on the street (meetings, Sunday Worship/Bible Study, Week Day Bible Study, Wednesday Chapel for preschool and Bible Gale, Friday ESL, children's Night, Saturday Youth Group). The worker is expected to attend all monthly board meetings (two), leadership team meetings (one per month), and congregational voters meetings (one per quarter). Specific penalties for an unexcused absence have not been defined. The worker is required to perform the services personally; any additional personnel are hired and paid by the church.

The church provides the church facility, including space for worship, instruction, and offices for the worker, other employees and volunteers. He is also provided with a computer, email account, information technology resources, internet access, copy machine, books and reference materials, office supplies, and other resources related to the operation of a religious organization. The worker furnishes his car for transportation in conjunction with work duties such as visiting members at their homes or places of business, as well as transporting youth to and from scheduled events, as well as his personal resource materials/books. The church reimburses for travel expenses related to attendance at local, regional, and national conferences and other events, and travel expenses other than the worker's regular travel to and from his primary place of business. The worker is paid a salary, provided the parsonage, and given a Christmas gift. The worker may receive direct payment for conducting special activities such as weddings, baptisms, or funerals, as well as when preaching or conducting a worship service at another church. The congregation makes contributions to the church. The worker is covered under the church's workers' compensation insurance policy. The worker's financial risk is limited to loss of payment from the church, should their financial situation prevent them from paying him.

Both parties concur the benefits extended to the worker are paid vacations, sick pay, paid holidays, insurance, pension, and bonuses. Either party can terminate the work relationship without incurring a liability or penalty. The worker is not performing same or similar services for others; and, he continues to be the spiritual leader of the church's congregation.

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## Analysis

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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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the church retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment, reputation, and to ensure its congregation's satisfaction. The worker is not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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, in this case the council. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the church.

## CONCLUSION

We conclude that the church has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.

Generally, churches and religious organizations are required to withhold, report and pay income and Federal Insurance Contributions Act (FICA) taxes for their employees. Employment tax includes income tax and FICA taxes withheld and paid for an employee. The compensation that a church or religious organization pays to its ministers for performing services in the exercise of ministry is not subject to FICA taxes. However, income that a minister earns in performing services in the exercise of his ministry is subject to SECA tax, unless the minister has timely applied for and received an exemption from SECA tax.

Please see [www.irs.gov](http://www.irs.gov) for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees, Publication 15 (Circular E) Employer's Tax Guide, Publication 1828, Tax Guide for Churches and Religious Organizations Employment Tax, and Publication 517, Social Security and Other Information For Members of the Clergy and Other Religious Workers.