

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

Occupation 05PCP Housekeeper	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**

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 non-profit organization operating a home for the aged. The firm states they have seven (7) seniors living in the home and they have volunteers and independent contractors to do household cleaning and cooking. These individuals have flexible schedules depending on times available and needs. The worker performed services for the firm from January 2017 to August 2017 as a housekeeper and cook. The firm believes the worker was an independent contractor while performing services for them because she did housekeeping for several people and she did her job at will. There was a written agreement between the firm and the worker that states the worker will be treated as an independent contractor for tax purposes.

The firm states they provided no training, instructions, or assignments to the worker and the worker determined how she performed her services. The worker was required to personally perform her services at the firm premises. The firm states the worker was required to notify them if any problems or complaints arose for their resolution. The worker's routine consisted of cooking breakfast and lunch and performing laundry and cleaning services as needed. The firm states they occasionally met with the worker for updates and discussion.

The firm states they provided food and cleaning supplies to the worker. The worker did not incur expenses, she was paid at an hourly rate, and she did not have an opportunity to incur a loss as a result of her services. The firm states the worker established the level of payment for the services provided.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others and she advertised her services by word of mouth. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship.

There was no evidence presented or found in this investigation that the worker bid on the job with the firm.

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## Analysis

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As in this case and 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. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on an as needed basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

There was no evidence presented or found in this investigation that the worker had a business license or business registration in the state where she performed services. While the submission of an invoice is a characteristic of an independent contractor, the total relationship needs to be analyzed to make an accurate decision of a worker's status. If a worker is required to submit an invoice in order to be paid or obtain a job or as a condition of employment, that factor loses weight in determining the worker's status as an independent contractor.

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.

Since the firm provided the food and cleaning supplies to the worker in order to perform her services, the worker did not have an opportunity to incur a loss or realize a profit as a result of her services. "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.

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. If it is a financial necessity to work for one or more entities, it does not make the worker an independent contractor. In addition, 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. 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.