

# SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Personal Care Providers	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 worker initiated the request for a determination of her work status as a caregiver in an independent living facility where she performed cooking duties (preparing 3 meals per day and light yard work) in tax years 2017 to 2019, for which she received Form 1099-MISC. The firm's business is described as an Independent Living Facility.

The firm's response, signed by the owner, indicates the firm's business is an Independent Living Facility. The worker provided services as caregiver.

The worker was given specific instructions on serving meals and watering plants. In the event of a move-in or inspection the worker was notified by office personnel or in-person as to the details and the day and time so she could prepare. The firm responded that there was no specific training and instructions provided to the worker and the job assignments were based on the rules and regulations. Both parties concur the firm determined the methods by which the worker's services were performed and any problems or complaints encountered by the worker were directed to the firm's owner or a manager for resolution. The worker was responsible for reporting disputes between residents, the residents not following the rules, or if additional care was needed for a resident. The worker's services were rendered on the firm's premises where she resided and was available 24/7. Her daily routine consisted of preparing for an 8:30 am breakfast, cleaning the kitchen, preparations for a 12:30 lunch, cleaning the kitchen, water plants, and cleaning front and back yard, preparation for a 7:30 pm dinner, followed by cleaning the kitchen, vacuuming, mopping floors, and cleaning up after the residents. The worker was required to attend employee meetings. The worker was required to perform the services personally. Any additional personnel were hired and paid by the firm.

The firm and worker acknowledge the firm provided all food, cooking supplies, mattresses, pillows, blankets, cleaning supplies; the worker furnished nothing and she did not incur expenses. If a purchase of food was made for the facility she provided a receipt and was reimbursed by the firm. The worker did not lease equipment, space, or a facility. The firm paid the worker a salary. The worker was paid a salary; with the worker noting she was allowed advances of pay in the event of an emergency. The clients paid the firm. The worker was covered under the firm's workers' compensation insurance policy. The firm stated the worker was not at risk for a financial loss in this work relationship; however, the worker disagreed, stating deductions were made from her check when a firm-phone was damaged. The worker did not establish level of payment for services provided.

Both parties concur that there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The firm terminated the work relationship.

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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.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

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 firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

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.

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 and Publication 15 (Circular E) Employer's Tax Guide.