

# SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Sleep Technologist	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 is in the business of operating a medical office specializing in neurology and sleep disorders. The worker was engaged as a sleep technologist. She received a 2017 Form 1099-MISC for her services. There was no written agreement.

The firm indicated that it did not provide any specific training but, according to the worker, they provided lab policies and procedures. The worker was told the days that she would be working based on the firm's work requirements. Each party indicated that the other determined the methods by which the assignments were performed; the firm or sleep center manager would be contacted if any issues or problems arose. The worker submitted patient study notes. She worked set scheduled hours and nights, conducting the sleep study where she prepared the room and patient information prior to the patient's arrival. The firm noted that there was no set schedule. Both parties agreed that the worker worked at the firm premises. Both agreed that the worker was required to perform the services personally; the worker noted that only the firm hired and paid any substitutes.

Both the firm and the worker agreed that the firm provided the equipment and supplies as well as the workplace. The worker was initially paid an hourly rate; however, the firm indicated that she was paid per sleep study performed and had no other economic risk. The customer paid the firm. The worker did not establish the level of payment for services; the firm disagreed and noted that both parties agreed to the level of payment.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. She worked under the doctor. The relationship has ended.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm obtained the patients and scheduled the testing. The worker was engaged as a sleep technologist and was to work under the general supervision of a licensed physician. She filled out an application and was interviewed for the position. The worker may not have had consistent, set scheduled work hours; she worked when needed and if available. However, 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. All of the worker's services for the firm were performed at the firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker was required to personally provide the services which indicated that the firm was interested in the methods used to accomplish the work as well as in the results. Understandable, as she applied and went through the interview process. While she may have worked part-time, she worked for the firm on a continuous basis. 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.

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. The worker had no investment in the facility, equipment or supplies that she used when performing services for the firm. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The worker indicated that she received an hourly rate of pay initially; then, per patient sleep study procedure. No evidence was provided supporting how the worker was paid, such as an invoice from the worker or time records.

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. There were no benefits and there was no written agreement. The worker was engaged to provide her services for the firm's medical practice. When doing so, the worker was not engaged in a separate business venture, and in fact, had to work under a licensed physician. In addition, the fact that her services were less than full-time also did not make her self-employed. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship 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 Publication 4341 for guidance and instructions for firm compliance.