

# SS-8 Determination—Determination for Public Inspection

Occupation 06THE.25 Therapist	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 a professional limited liability company in the business of providing physical therapy services. The firm engaged the worker as a personal trainer/aide. There was no written agreement between the two parties. The worker filled out an application for the position.

The worker stated she did receive specific instructions on what services to perform for the clients. The worker received her assignments from the firm. The firm stated the worker determined her own method in performing her services and the worker stated the firm determined how she should perform her services. The worker relied upon the firm to resolve problems and complaints. The worker stated she had a weekly schedule and the firm stated the worker's schedule was flexible. All services were performed at the firm's location. The worker was required to attend weekly and monthly meetings. The worker was required to perform the services personally.

The firm provided the location, equipment and supplies the worker needed to perform her services. The worker did not lease any space to perform the services. The worker did not incur any expenses in the performance of her services. The worker was paid on a weekly salary basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker stated she did receive bonuses from the firm. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm stated they represented the worker as a trainer and the worker stated she performed services under the firm's business name. The worker terminated her services from the firm without 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.

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.

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.

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.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker was an employee according to common law. The information provided by both parties showed the worker did have a weekly work schedule, was dependent upon the firm for her assignments and to resolve any problems or complaints that arose as an employee. The worker performed her services at the firm's business location and was required to perform her services personally. This demonstrated the firm was interested in the methods used as well as the end result as an employer. The firm had the financial investment as the firm provided the location, equipment and supplies for the worker to perform her services. The clients that patronized the services were the firm's clients as they paid the firm directly for the services they received. Financial control by the firm was shown by the firm determining the worker's weekly salary. The worker performed services as a personal trainer/aide for the firm's physical therapy business which demonstrated the worker's services were integrated in the firm's daily operations.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989