

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

Occupation 02CSP Computer Services Personnel	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 an internet and web-based application company and reputation management business that helps local business with their online presence. The worker was engaged in 2017 and 2018 as a campaign representative under a written agreement. The firm's send in numbers and emails of their customers and the worker enters the information into their software so they can survey them. The firm believes the worker is an independent contractor while performing services for them because she provides services under a specified contract that they have with her and they do not withhold taxes from her pay. The firm reports the worker's earnings on Forms 1099-MISC.

The firms states they provided the worker with training via video tutorials and voice/email communications. The worker's supervisor provides the worker with her assignments and they determine how she completes those assignments. The worker is required to notify the firm if any problems or complaints arise for the resolution. The worker is required to personally perform her services and she performs her services 100% of the time from her home. The firms states the worker's routine is Monday through Friday from 6 a.m. to 2-4 p.m.

The firm states they provide no supplies, equipment, and materials to the worker. The worker provides all supplies and materials as well as the internet service in order to perform her services. The clients pay the firm for services rendered by the worker and the firm pays the worker at an hourly rate. The firm states they established the level of payment for the services provided. The worker does not have an opportunity to incur a loss as a result of her services.

The worker is not eligible for employee benefits. She does not perform similar services for others and she does not advertise her services. Either party can terminate the work relationship at any time without either party incurring a liability.

A copy of the Independent Contractors Agreement effective June 8, 2017 between the firm and worker was submitted for consideration. The agreement, in part, states the worker is being engaged to provide data entry services for compensation at an hourly rate and the worker will determine the method, details, and means of performing those services. The worker agrees to provide a report of daily hours worked for invoicing at the end of the day and invoices will be paid weekly, by mailed check, or direct deposit. The agreement will stay in effect until an unknown date but the need would be reviewed weekly. Neither the agreement nor any duties or obligations under this agreement may be assigned by the firm or the worker without the prior written consent of the worker and 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 firm provided the worker with training and instructions at the beginning of the work relationship. The firm afforded the worker with a great deal of freedom while performing her services as the majority of her services were performed away from the firm's premises. With more and more workers working out of their home office and this becoming the reoccurring trend in the current workplace, this fact by itself, does not mean that the worker is not an employee. 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. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. 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.

There was no evidence presented or found in this investigation that indicates the worker had an investment in a business related to the services she performed for the firm offering those services to the general public. The fact that the worker had a small investment in a computer, cell phone, and printer is not above and beyond what has become the growing trend in homes across the U.S.

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. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement or the filing of a Form W-9), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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.