

# SS-8 Determination—Determination for Public Inspection

Occupation 05COU Camp Counselor	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

CASE FACTS: The firm is an Alternative, Co-Educational Independent Day School which offers a part-time summer art play program (camp) for 4 weeks during the summer. Enrolled and non-enrolled students of the school were the attendees of the summer camp. The worker was engaged as a Summer Camp Counselor from 6/2019 to 8/2019. The worker had previously performed the same services for the firm during the summer months consecutively since 2015. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8. According to the firm it followed historical accounting procedures that allowed them to pay the worker in this manner. I reached out to the firm for more information about the historical accounting procedures but, received no reply.

The worker received a brief training from the firm. The firm stated that there was no training done. The worker received her instructions verbally regarding the services to be performed. She worked 5 days a week, from 9:30 am to 3:30 pm, and received regular weekly remuneration for the services she provided to the camp's attendees. The firm determined the methods by which the assignments were performed. The firm was responsible for problem resolution. The worker was required to submit a weekly oral report. The firm replied stating that no reports required. She performed the services on the firm's premises. The worker was required to attend weekly meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker performed services on a continuous basis for the firm. The worker performed the services for the firm seasonally since 2015 during the summer months. The nature of this work relationship contemplated that the worker would perform the services personally. Her services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

The firm furnished the worker with all art materials, activity supplies and snacks for the use of the firm's attendees of the camp, at no expense to her. The worker did not lease any equipment. The firm determined the fees to be charged to its customers. The worker did not incur any significant business expenses. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm carried worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the worker's services at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did perform similar services for another firm. She did not advertise her services to the public. She did not maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The worker stated that she was represented as a temporary employee of the firm. The relationship between the parties ended when the summer camp session ended.

---

## Analysis

---

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 you have an employer-employee relationship, it makes no difference how it is labeled. The substance of the relationship, not the label, governs the worker's status. Nor does it matter whether the individual is employed full or part time.

The fact that a worker performed her services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Regardless if the worker worked on a full-time basis or part-time basis, for Federal income tax withholding and Social Security, Medicare, and Federal unemployment (FUTA) tax purposes, there are no differences among full-time workers, part-time workers, and workers hired for short periods. Income tax withholding may be figured the same way as for full-time workers. It is possible for a person to work for a number of people or firms concurrently due to financial need and supporting oneself and be an employee of one or all of whom engages her.

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.

Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you retained the right to control the details of how the services were performed. 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 shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.