

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	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 an office assistant in tax years December 2017 to October 2018, for which she received Form 1099-MISC. The firm's business is described as veterinary services, mobile and virtual office calls.

The firm's response was signed by the CEO. The firm's business is mobile veterinary services. The worker provided services of veterinary scheduling, answering veterinary phone calls and emails regarding the scheduling of veterinary house calls.

The firm and worker acknowledge the worker was given paid training and instructions from the office manager on how to answer calls, respond to emails, how to call in prescriptions to pharmacies, and how to use the google scheduling applications. The firm indicated the worker determined the methods by which the worker's services were performed; the worker disagreed. Any problems or complaints encountered by the worker were directed to the firm's office manager for resolution. The services were rendered and agreed upon in coordination with the office manager, and performed at the worker's home. The worker was required to perform the services personally.

The firm responded that nothing was provided to the worker; however, the worker stated the firm provided the [REDACTED], phone communicator, [REDACTED], and calendar. Both parties concur the worker furnished a computer and phone. The worker did not lease equipment, space, or a facility. The worker was paid an hourly wage; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker indicated she was not at risk for a financial loss in this work relationship; the firm stated she was at risk for loss or damage to her computer and phone. The worker responded she did not establish level of payment for services provided or products sold; however, the firm stated the worker and firm mutually agreed upon the level of payment for services provided.

Both parties agree that no benefits were 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 worker stated she was given a 3-month performance evaluation and other reviews, that her work schedule was made by the firm, and a request for time off had to be approved. The work relationship was ended by the firm due to the worker not completing requirements per the agreement. The firm provided a copy of an agreement which stated the worker was to provide scheduling and administrative services for clients of the firm, with compensation of \$XX/hour for scheduling assistant work on behalf of the firm, and the worker was to her pay taxes and for the expenses incurred.

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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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work 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.

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.

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.

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. 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

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.