

# SS-8 Determination—Determination for Public Inspection

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| Occupation<br>02OFF.211 OfficeWorker | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                                 | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

## Facts of Case

The worker initiated the request for a determination of her work status as a front desk manager/receptionist. Her duties were to schedule students for their teachers and make sure proper paper work was turned in, in tax years 2014 through 2015. The firm's business is described as a performing arts center for vocal, piano and dance lessons, as well as theatre.

The firm's response was signed by a board member. The firm's business is described as a children's theater company. The worker performed services as support of theatre productions, coordinated the box office, produced the programs for each show, and signed actors in/out for rehearsals and shows.

According to the firm, the worker was given a general orientation which included the firm's ticket sales software. The work assignments were determined by the firm's director, but stated the worker determined the methods to be used to perform her job tasks. The firm's director would be contacted if the worker encountered a problem or complaint that required resolution. The worker's time was spent at the theatre and the studio. The worker was required to perform the services personally, with the firm hiring and paying for substitutes or helpers.

The worker agreed with the firm's responses; however, also added that she had a regular schedule in which her services were rendered from 2 p.m. to 7:30 p.m. Monday through Thursday.

The firm provided computer and software to track ticket sales; and, indicated the worker provided her personal laptop computer, as necessary. Both parties concurred that the worker did not lease equipment and did not incur expenses in the performance of the job with the firm response indicating the firm reimbursed for any out-of-pocket expenses related to a production. The customer paid the firm. The firm did not identify how the worker was paid; the worker stated she was paid an hourly wage. The firm and worker agreed that she was not at risk for a financial loss in this work relationship.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated she was not performing same or similar services for others during the same time frame; the firm did not know.

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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.

We have considered the information provided by both parties and have applied the above law 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 and that its contractual obligations were met. 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.