

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

Occupation 04MAN.59 Manager	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

The firm is a sole proprietor providing video and editing services to the customers. The firm engaged the worker as a senior video editor and to provide office related services. There was a written agreement between the two parties.

Therefore, your 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.

The worker was trained on the firm's uniqueness of their services. The firm gave the worker her assignments and the firm had the final approval on whether or not the services were up to their standards. The worker relied upon the firm to resolve problems and complaints. The worker provided copies of time sheets she was required to submit to the firm. The worker was required to perform 40 hours per week. The worker performed her services both at home and at the firm's place of business. The worker stated she was required to attend weekly production meetings at the firm's office. The worker was required to perform the services personally.

The firm provided a computer, software, footage, cameras and all equipment needed for the worker 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 duties. The worker was paid on an hourly basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker stated she received paid vacations, sick pay, holiday pay, personal days, and bonuses. 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 worker's services were performed under the firm's business name. The worker terminated her services.

The worker provided a copy of a letter from the firm offering her a position of Senior Video Editor/office related support. The worker was required to perform 40 hrs. per week at \$17/hr. The worker had free use of all equipment available to the firm. The worker would perform additional hours of work as available. The worker would receive a bonus for any sales related activities. The worker would be considered for fulltime employment within three months.

The contract between the two parties outlined the scope of services the worker was required to perform, the hourly rate of pay and reimbursement of travel expenses for travel outside of a 50 mile radius of the firm. There were specific non-compete the firm's listed in the contract.

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**Analysis**

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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. See Rev. Rul. 70-630, 1970-2 C.B. 229.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. See Rev. Rul. 70-309, 1970-1 C.B. 199. "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 worker was an employee according to common law. The information provided by both parties showed the worker was trained by the firm and the worker's finished product required the firm's approval. Control by the firm was also demonstrated since the firm required the worker to provide timesheets. The fact the worker was required to perform the services personally showed the firm was interested in the methods used as well as the end result as an employer. The firm provided the worker with all of the equipment and materials the worker needed to perform her services which showed the firm had the financial investment as operating their own business. The lack of a business presence by the worker was also demonstrated by the fact the worker did not incur any expenses in the performance of her services. The firm set the hourly rate of pay to the worker which demonstrated financial control by the firm. All of the worker's services were performed under the firm's business name which showed the worker's services were integrated into 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