

# SS-8 Determination—Determination for Public Inspection

Occupation 05PCP Personal Care Providers	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 church who engaged the worker as an assistant pastor during the time period of 2016. He was issued a 2016 Form 1099-MISC for those services; he was also issued a Form 1099-MISC for services performed in 2014 and 2015. The church provided the worker with a 2017 Form W-2. There was no written agreement.

The worker received his work assignments from the church elders; the church noted that when he was the pastoral assistant, he received his work assignments from the pastor. The worker determined the methods by which the assignments were performed; the church noted that the pastor did, but both agreed that the elders would be contacted if any problems or complaints arose. There were no required reports; the church mentioned mileage. Each week, the worker led church services and visited the sick; church noted that the position was part-time with varied hours. He worked at the church, hospital, homes, etc. There were meetings. The worker personally provided the services with only the church hiring and paying any substitutes.

Both the church and the worker agreed that the church reimbursed him for mileage. The worker noted that he was paid a set monthly amount. The worker had paid vacations according to the church. Both agreed that either party could terminate the relationship without incurring a liability. The worker did provide similar services for others. He was a pastoral assistant during 2016 for the church. The work relationship is ongoing.

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**Analysis**

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case 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.

In this case, the church retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its mission. 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.

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, there were no relevant inconsistencies in the information provided. Based on the information provided and the above analysis, we conclude that the church 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.

However, please note the following special information regarding the relationship between churches and employees.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Churches or church-controlled organizations that are opposed to the payment of social security and Medicare taxes and that have filed Form 8274 for exemption do not pay social security and Medicare taxes. Their employees, however, are subject to self-employment tax.

Services performed by a minister in the exercise of his or her ministry are exempt from social security and Medicare taxes. Such services are, however, subject to the taxes imposed under the Self-Employment Contributions Act (SECA).

Services performed by a minister in the exercise of his or her ministry are also exempt from mandatory federal income tax withholding even though these earnings should be reported on Form W-2. Income tax may be withheld under a voluntary agreement between the church and the minister. For more detailed information, please refer to Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers by calling 1-800-TAX-FORM.