

# SS-8 Determination—Determination for Public Inspection

Occupation 02AAD Architects, Artists, and Designers	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 firm is a trade show and event marketing business. The firm engaged the worker through a educational facility referral to create marketing layouts for the firm's clients and business marketing. The firm engaged the worker as a temporary employee to work under the firm's management team under an internship development opportunity for both the firm and the worker. The firm agreed to pay the worker an hourly wage. The hours would be determined prior to each work week.

The firm provided the worker with job instructions and training. The firm verbally assigned the worker jobs to perform. The firm determined the methods used to perform the services. The worker was required to contact a designated individual regarding any problems or complaints for resolution. The firm required the worker to provide reports of the work product. The firm allowed the worker to perform the services on a flexible variable schedule based on worker's availability and firm's needs. The worker was required to perform the services at the firm's premises. The firm required the worker to attend job related meetings. The firm required the worker to perform the services personally.

The firm provided a computer and software needed by the worker to perform the services. The worker did not lease anything or incur any business expenses. The firm required the worker to submit invoices for the hourly wage payments for services. The customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for the services and products sold.

There were no contracts or benefits paid by the firm. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others. The worker posted her education information and work desires with a resume on the web but did not advertise as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There was a letter indicating the worker to be a temporary part-time employee intern. The worker was not attending college but had graduated and the payment was not used for living and educational items in obtaining a degree but for services being performed for the benefit of the firm and the worker. The worker personally performed services for the firm's business customers at the firm's place of business under a firm designated individual on a regular and continuous part-time flexible as needed basis. The worker performed the services under the firm's business name and did not advertise as a business to the public.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Based on the autonomy of the working relationship we have determined the worker to have been an employee under common law.