

# SS-8 Determination—Determination for Public Inspection

Occupation 02ABT Accountant	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 homebuilder and construction business. The firm engaged the worker through an application process to perform accounting services for the firm's business operation. The firm provided no training or instructions due to the worker's experience per the firm and the worker indicated being trained by an employee the worker was replacing. The firm assigned the worker a work schedule per worker and the firm stated the worker was aware of job requirements to this issue. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm to resolve any problems or complaints. The worker provided time reports on a computer per worker. The worker performed services during the firm's hours of operation at the firm's place of business. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided all the office equipment, materials, and supplies. The worker provided nothing and did not incur any expenses. The firm paid the worker an hourly wage. The customers paid the firm. No advances were allowed. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk other than loss of pay.

There were no contracts between the parties, the worker provided the firm with a W-9 was indicated to contract question by the firm. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker by name as a representative of the firm's business name. 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. 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, 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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. 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 and the firm's customers paid the firm. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. 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. A Form W-9 was signed per the firm. The Form W-9 does not make the worker to be an independent contractor but rather the autonomy of the relationship determines the workers' status for Federal Employment Tax Purposes. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The firm referred to the worker as a representative of the firm's business to the customers.

Both the firm and the worker 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 information provided by both the firm and worker it has been determined that the worker was an employee under common law in this working relationship.