

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

Occupation 02ADM Administrators	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 design, manufacturing, and sales of wireless devices to businesses and engaged the worker to perform administrative assistant services for the firm's business operation. The firm provided the worker with training on the products and business practices and procedures. The firm allowed the worker flexibility on performing services during work schedules and both at the firm's place of business and from home based on the firm's business needs. The firm and worker determined the methods used to perform the services. The worker contacted the firm to resolve any problems or complaints. The firm did not require the worker to perform the services personally. No substitutes or helpers were hired or paid by either party.

The firm provided equipment, materials and supplies at the firm's place of business and the worker provided personal items when working at home. The worker did not lease equipment or space. The worker incurred event related expenses and was reimbursed by the firm. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm and worker agreed upon the hourly wage payment verbally at the beginning of the working relationship. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business.

There were no contracts between the firm and worker. There were discussions on whether the worker would be paid as an independent contractor or an employee for the payments for services. The firm did not provide the worker with any paid benefits. The worker did not perform similar services for others while performing services for the firm. The firm did not know if the worker advertised as a business to the public and the worker indicated not applicable to this issue. The firm referred to the worker as a customer service representative of the firm's business to the customers. 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 at the firm's place of business, 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 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 significant on-going business expenses. The firm reimbursed the worker for business expenses incurred. 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 services and products sold. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed contracts between the firm and the worker. There were verbal discussions on the worker classification issue during the working relationship and the firm issued the worker a check for half of the self-employment tax due on the income earned. 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 or as the customer service representative to the customers.

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.