

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

Occupation 02CON.9 Consultant/Advisor	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 an investment advisor business. The firm engaged the worker through an application and interview process to perform projects for the firm's business operation. The initial job offer indicated the hourly wage that would be paid during a 90-day probationary period. The firm provided the worker with training on the firm's [REDACTED] system and assigned the worker projects to perform based on the firm's business needs and as each project was completed. The worker determined the methods used to perform the services and resolved problems or complaints due to his intellectual knowledge per the firm. The firm required the worker to provide the firm with time reports. The worker worked on a flexible schedule basis during the firm's business hours at the firm's office and occasionally from home per the firm. The worker attended compliance meetings and subsequently weekly accounting meetings. The firm required the worker to perform the services personally.

The firm provided office, equipment, materials, and supplies. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage. The customers paid the firm. The firm determined the level of payment for the services by the customers and worker agreed to the hourly wage in the job offer letter. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no signed contracts between the firm and the worker. The worker signed an agreement to abide by the firm's code of ethics in September of 2013 and receipt of the firm's compliance manual to abide by the policies and procedures contained within it as an employee. The firm paid the worker an end of year bonus after being evaluated on job performance. The firm did not know if the worker performed similar services for others or advertised as a business to the public. The worker indicated no similar services were performed for others and no advertising as a business was done. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm reclassified the worker to an employee in 2014 and indicated the job changed.

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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. In this case the firm engaged the worker through an application and interview to perform project work for the firm's business operation as needed. The job offer letter indicated the hourly payment during a probationary period. Subsequently the firm required the worker to sign paperwork regarding abiding by firm's ethics, policies, and procedures. The firm assigned the worker projects to perform. The firm provided the worker with training on the firm's business system. The firm allowed the worker to work a flexible schedule. Due to the projects assigned and worker's intellect the worker determined the methods used and resolved any problems or complaints. The firm required the worker to provide time reports. The firm required the worker to attend quarterly compliance meetings and subsequently weekly accounting meetings. The firm required the worker to perform the services personally. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided office space, equipment, materials, and supplies. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the firm's customers paid the firm. The firm determined the level of payment for the services paid by the customers and agreed to by the worker in the job offer letter for 90-day probationary period. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operations. 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 indicating the worker to be an independent contractor. There were several signed subsequent agreements by the worker indicating the worker to be an employee and required to abide by the firm's ethics, policies, and procedures. The firm paid the worker an end of year bonus after being evaluated on job performance related to services performed in 2013. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising 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.

In this case it is determined that the worker was an employee under common law during the entire working relationship.

The firm reclassified the worker to employee status in 2014 and indicated the relationship changed. We appreciate your coming into compliance with federal employment tax laws.