

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

Occupation 02LAW Law Staff	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 legal business and the firm engaged the worker through an employment agency to perform part-time paralegal services for the firm's business operation. The firm allowed the worker to perform services on a flexible schedule in 2017. The firm did not provide the worker with any training due to the worker's prior experience. The worker was assigned jobs by the firm. The firm and worker determined the methods used to perform the services. The worker contacted the firm or other firm designated individuals regarding problems or complaints for resolution. The worker provided the firm with availability and time reports. The worker's daily routines varied based on the firm's business needs and worker's availability. The worker performed the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed.

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

There were no formal contracts between the firm and worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker did no advertising as a business to the public. Both the firm and the worker 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 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 provided the office, equipment, materials, and supplies. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no formal contracts between the firm and the worker. The firm provided no benefits. The firm believed the worker may have performed similar services for others and was not required to obtain the firm's prior approval to do so. The fact that a worker may perform similar services for others would be an important factor to consider in an independent contractor relationship; however, this factor alone would not make the worker to be an independent contractor. Many workers work at more than one job at a time and may be employees in one or all of the working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed services as available on a part-time basis for the firm at the firm's place of business over a period of several months under the firm's business name.

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 autonomy of the working relationship it has been determined the worker was an employee of the firm under common law.