

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	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 insurance claim processing business and engaged the worker to process insurance claims for the firm's business and business clients. The firm and worker entered into a contract to perform services as needed in a specific location for a client of the firm. The agreement addressed job assignments and work specifics, payment rates and days paid, job liabilities associated with early termination issues as well as client practices and procedures to be followed. The assignments were temporary and separate. There were penalties associated with early termination of jobs and client satisfaction on the services performed.

The worker was liable for errors and omissions losses or liabilities in performance of services and paid the firm a set amount per file to purchase adequate insurance coverage unless the worker provides evidence of insurance coverage acceptable to the firm. The firm was entitled to hold back 10% of worker's compensation to reimburse the firm in the event that any claim assigned needed to be re-worked or reopened for re-inspection and adjustment by the firm within 90 days of completion. This hold back amount would be released within one hundred and twenty days following completions of the assignment.

The worker was responsible for all personal and professional expenses incurred for services performed under the agreement. The worker agreed that the relationship was being performed as an independent contractor and worker had the right to control and direct the means, manner, and methods to perform the services required in the agreement. The worker could perform services at any place, location and time as long as the productivity requirements and deadlines of the firm and firm's clients were met. The worker would provide additional personnel required per the agreement.

The worker agreed to terms and termination clauses, confidentiality of information issues as well as not to solicit the firm's employee's or customers directly or indirectly for set amounts of time frames. Remedies for breach of the agreement were in place for both parties. The agreement was signed by both parties.

---

**Analysis**

---

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm did not retain the right to change the worker's methods and to direct the worker. The firm allowed the worker to perform the agreed upon services how, when, where the worker chose as long as the services were performed according to the contracts. The firm did not provide the worker with any training. The worker was not prohibited from performing similar services for others and was not required to perform the services personally. These facts indicate the worker had control over the methods and means used to perform the services.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker invested capital or assumed business risks, and therefore, did have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker provided all the equipment, materials, and supplies needed to perform the services. The worker incurred business expenses and was not reimbursed for any expenses. The worker had control over the profit and loss made with regard to performance of the services. These facts indicated the worker had financial control over the services performed for the firm.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was engaged in an independent enterprise. The worker signed a working relationship agreement indicating the worker controlled the autonomy of the working relationship. The worker agreed to what, when, how, and where the services would be performed. The worker agreed to the amount paid by the firm to obtain the worker's services. The worker determined the term of the agreements and could end the relationship once jobs were satisfactorily performed without incurring any liability. The worker could incur a liability if the services were not performed according to the agreements.

Based on the autonomy of the working relationship we have determined the worker to have been an independent contractor.