

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 salon and spa business. The firm engaged the worker through the acquisition of the business to continue performing receptionist services from Oct. 2017 through Feb. 2018. The firm did not need to provide the worker with any training due to the worker's knowledge of the business and jobs. The worker performed the same jobs as well as new assignments requested by the new owner and the prior owner who was now considered the manager of the business. The firm owner and manager determined the methods used by the worker to perform services. The firm required the worker to contact the manager or owner regarding problems or complaints for resolution. The worker provided the firm with time reports. The worker's hours varied based on business needs and worker's availability. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided everything the worker needed to perform the services. 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 customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm did not change the prices established for services and products or payment to worker's for the business when the business was purchased.

There were no contracts between the firm and worker. The firm did not provide any benefits to the worker. The worker did not perform similar services for other businesses or advertise as a business to the public. The worker continued to perform the same services she had been performing for the prior owner and was issued a Form 1099-MISC for the payment for services by the new owner under the prior business EIN number in 2017. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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. 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. The worker did not perform similar services for other businesses while performing services for the firm. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's new owner on a regular and continuous as needed and available part-time basis under the firm's business name at the firm's place of business.

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 we have determined the worker to have been an employee under common law.