

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Worker	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 operating a property management business and engaged the worker through an application process to perform office work for the firm's business. The firm assigned the worker services to perform and determined the methods used to perform the services. The worker was required to contact the firm's management regarding problems or complaints for resolution. The worker was required to provide the firm with business reports via e-mails. The firm determined the workers work schedule. The worker was required to perform the services at the firm's business location. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided all the 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 reimbursed the worker for business related expenses. The firm paid the worker a salary on a weekly basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm did not provide any benefits. The worker did not perform similar services for others while performing services for the firm or advertise as a business to the public. The firm referred to the worker as a contracted employee under the firm's business name. Both parties 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 signed contracts between the firm and the worker. The worker did not perform similar services for others 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 business at the firm's place of business under the firm's business name.

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.