

# 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 law firm. The worker was engaged by the firm to perform filing services. The firm reported the worker's remuneration on Form 1099-MISC for 2017.

Information from the parties supports that the firm did not provide specific training or instructions. If problems or questions occurred, the worker contacted an office administrator. The worker's schedule was infrequent, inconsistent, and for limited hours. The worker performed his services on the firm's premises. The worker was required to perform his services personally.

The worker did not incur expenses in the performance of his services. The firm paid the worker at an hourly rate. It did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the firm terminated the work relationship.

---

## Analysis

---

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm did not provide specific training and instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The firm was responsible for resolving any problems or issues that may have occurred, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was required to perform his services personally, meaning that he could not engage and pay others to perform services for the firm on his behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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 did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker was not engaged in an independent enterprise, but rather the filing services performed by the worker were a necessary and integral part of the function of the firm's business. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.