

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

Occupation 02OFF.29 OfficeWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

The firm operates an internal medicine clinic. The firm engaged the worker through an application process to perform as needed office work at the firm's place of business. No formal training was provided by the firm. The firm assigned the worker services to perform when hired and the firm's designated office manager assigned jobs as needed to the worker. The firm, office manager, and worker determined the methods used to perform the services. The firm required the worker to provide the firm with time reports. The worker performed the services on a flexible schedule based on the firm's business needs. The firm required the worker to contact the office manager regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's office. The firm hired substitutes or helpers as needed and the office manager paid them.

The firm provided 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 and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm and worker disagreed on who determined the level of payment for the services. The firm's position and pay rate was provided indicating the worker as PRN - office at \$10 hourly rate. The worker indicated she could not suffer any economic loss and had no financial risk. The firm stated her financial risk was loss of contract and minimal "as needed" time allowed to work.

There were no legal binding contract provided. The firm indicated there was a signed contract and provided a signed Compliance & Confidentiality Agreement. The firm did not know if the worker performed similar services for others or advertised as a business to the public. The worker indicated no similar services were performed for others while performing services for the firm and she did no advertising as a business. The firm and worker agreed the working relationship could be terminated at any time by either party 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, you not the worker had control over the methods and means used in the performance of the services.

You engaged the worker to perform services as needed. You and your designated office manager assigned the worker services to perform based on your business needs. You required the worker to contact the office manager regarding problems or complaints for resolution. You, your office manager, and the worker determined the methods used to perform the services. You required the worker to provide you with time reports. You required the worker to perform the services personally at your place of business. These facts evidence behavioral control by you over the services performed by the worker.

You provided everything needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. You paid the worker an hourly wage and your customers paid you. You determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for your business operation. These facts evidence financial control by you over the services performed by the worker.

There were no formal legal binding contracts provided between you and the worker. You indicated there was a signed contract and provided a signed compliance and confidentiality agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for your business on an as needed basis at your place of business under your business name over a period of several months.

Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.