

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.62 AdministrativeAssist	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 owns and operates a bed & breakfast business. The firm engaged the worker through an application process from a [REDACTED] job announcement to perform part-time assistant services for the firm's business operation. The worker received job training from a firm's prior assistant on job requirements needed to be performed. The firm assigned the worker jobs and schedules to perform the services based on business needs. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's schedule varied based on the firm's business needs. The worker performed 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.

The firm provided equipment and materials needed by the worker to perform the services. The worker did not lease equipment or space. The worker incurred cell phone and commuting expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm's business. The worker did not advertise to the public as being engaged in a business. The firm referred to the worker as an employee of the firm's business to the customers. Both parties retained the right to terminate the working relationship at any time 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. In this case the firm engaged the worker to perform administrative assistant services part-time through an application process for the firm's business. The firm advertised the job on [REDACTED] and indicated job requirements and qualifications needed and desired from applicants. The firm provided the worker with the necessary training through a prior worker. The firm assigned the worker jobs to perform and schedules to work based on the firm's business needs. The firm determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers as needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment and materials needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. 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 others while performing services for the firm's business. 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 on a regular and continuous part-time as needed basis over several months. 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.