

# SS-8 Determination—Determination for Public Inspection

Occupation OFF02.243 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 is operating a roofing and storm restoration business and engaged the worker to perform office work for the firm's business. The firm provided the worker with the necessary training and instructions on information needed to submit with repair claims to insurance companies on behalf of the homeowners. The firm assigned the worker services to perform by providing homeowner signed claim forms. The firm determined the methods and means used by the worker to perform the services. The firm required the worker to contact the firm when homeowners had complaints with regard to the services they received for resolution. The firm required the worker to provide the firm with monthly sales reports and projected earnings for claims in process. The worker performed the services during the firm's hours of operation at a firm leased office location. The firm hired and paid substitutes or helpers if needed.

The firm provided the office space, office equipment, materials, and supplies. 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 directly or through customer's resources. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and products. 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 or advertise as a business to the public. The firm referred to the worker as an office manager under the firm's business name 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. 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. The firm provided the worker with the necessary training and instructions with regard to information needed to be submitted to customer resources in order to be paid for the services and products. The firm determined the hours of operation. The worker was required by the firm to contact the firm regarding any customer complaints on jobs performed. The firm required the worker to submit monthly reports on claims paid and pending. The firm hired and paid substitutes or helpers if needed. 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. The firm provided office space, 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 on-going business expenses. The firm paid the worker an hourly wage and the firm was paid through customer resources. The firm determined the level of payment for the services and products sold. 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 profits made nor the risk of losses being incurred with regard to performance of the services 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 received 4 paid holidays during the working relationship. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business on a regular and continuous basis at the firm's leased office space under the firm's business name over a period of several months. 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.