

# SS-8 Determination—Determination for Public Inspection

Occupation 02REC Recruiters	Determination: <input type="checkbox"/> Employee <input checked="" type="checkbox"/> Contractor
UILC	Third Party Communication: <input 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 clinical research business and the firm engaged the worker through an advisor referral to recruit candidates for participation in on-going studies. The firm allowed the worker flexibility in when, where, and how to perform services. There were no contracts between the firm and worker. The worker was informed of research studies being conducted by the firm and determined how to identify recruits for the studies. The worker attended meeting occasionally when in the office working. The firm did not require the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided a telephone, computer, and materials and the worker provided a cell phone and personal vehicle. The worker did not lease equipment or space. The worker incurred expenses for a personal vehicle use and the firm on occasion reimbursed mileage. The worker was paid an hourly wage and commissions. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk.

The firm provided no benefits. The worker did not perform similar services for others or advertise as a business to the public per the worker. The firm did not know if worker advertised as a business and did not answer the question regarding performing similar services for others. Both parties agreed the relationship could be terminated by either party 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 issue that the worker was permitted to perform services on a flexible schedule and wherever the worker desired would not make the worker to be an independent contractor. The firm determined what research studies would be done and advised the worker of them in order to recruit patients for the studies. The worker personally performed the services on a regular and continuous flexible schedule. The firm hired and paid any substitutes or helpers it deemed necessary in recruitment of patients for clinical studies the firm was conducting. These facts evidence behavioral control by the firm over the services performed by the worker.

In this case, there is no evidence that the worker was engaged in a similar business of her own in which she made these types of services available to the public. The firm provided the equipment, materials, and supplies needed in order for the worker to perform the services. The firm paid the worker an hourly wage and commissions. The firm's customers paid the firm for the studies. The firm reimbursed the worker for occasional mileage expenses related to the use of the workers' personal vehicle. The worker did not have control over profits made nor the risk of loss due to on-going significant business capital investments being made. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered having control over profit or loss in the operation of a business. 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 or advertise to the public as a business. The worker personally performed services for the firm's business operation under the firm's business name on a regular and continuous variable flexible schedule basis over several years. 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.