

# SS-8 Determination—Determination for Public Inspection

Occupation 02RET.8 Retail Worker	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 a baseball tournament coordination and service business operation. The firm engaged the worker through a referral to perform various retail inventory and sales services for the firm's business as needed and available. The worker was experienced so no formal training was needed. The worker stated she was trained on firm's [REDACTED] system. The firm provided instructions on assigned tasks to be performed per the firm. The firm verbally or through checklists assigned the worker services to perform. The firm, firm's designated supervisor, and worker determined the methods used to perform the services. The firm required the worker to contact the supervisor or firm regarding problems or complaints for resolution. The firm did not require the worker to provide any reports per the firm and the worker stated she provided quarterly inventory reports. The worker performed the services on a flexible as available and needed basis at the firm's place of business and concession stand. The firm required the worker to perform the services personally. The firm hired and paid substitutes when worker was not available.

The firm provided equipment and supplies. The worker did not lease anything. The worker incurred occasional gas expenses and the firm reimbursed them. The firm paid the worker an hourly wage. The customers paid the firm. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated there was a verbal agreement. 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. 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. 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 on-going significant business 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 have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. The firm had the business investments and control over profit and risk of loss with regard to the services the worker performed for the firm's 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 firm indicated there was a verbal 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 while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services on a regular and continuous part-time as needed and available basis over several months under the firm's business name at the firm's places of business.

Both the firm and 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.