

# SS-8 Determination—Determination for Public Inspection

Occupation 03IEI.7 Inspector	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 County Government entity engaged to provide the [REDACTED] with drug and alcohol screenings on individuals going through the court system. The firm engaged the worker an LPN to provided drug screenings and assessments on the individuals. The firm provided the worker with training on the use of the drug testing machine and through attending a annually held Drug Court State Conference. The worker received assignments through firm scheduling of appointments and walk-ins seeking the services. The firm, Drug Court Team, and worker determined the methods used to perform the services. The firm required the worker to contact firm designated individuals regarding problems or complaints for resolution. The firm required the worker to provide drug screening reports and individual assessment reports. The firm required the worker to perform the services during firm designated schedules at the firm's place of business and at court as needed. The firm required the worker to perform the services personally. Other firm personal provided services if substitutes or helpers were needed and the firm paid them.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm reimbursed the worker for expenses incurred for travel to training or conferences. The firm paid the worker an hourly wage and the firm was paid through the customers. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There was a signed independent contractor agreement entered into indicating the worker would perform services for a County Circuit Drug Court clients for an hourly rate. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The firm referred to the worker as an employee 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 engaged the worker to perform nursing services for the state district court system based on prior experience and having the credentials needed to perform the services. The firm provided the worker with the necessary training in order to perform the services. The firm assigned the worker services to perform and schedules to work based on the firm's customers needs and requests. The firm required the worker to provide the firm with various work and result reports required by the firm's customers. The firm required the worker to contact designated individuals or the firm regarding any problems or complaints for final resolution. The firm required the worker to perform the services personally. Substitutes or helpers were provided by the firm and paid by the firm. 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 everything the worker needed to perform the services. 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. The firm 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 the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed contract provided indicating the worker to be an independent contractor. 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. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business operation under the firm's business name on a regular and continuous basis over several months at the firm's business location or other designated locations. 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.

As it has now been determined that the worker is an employee, you need to contact your [REDACTED] Administrator to determine if a section 218 agreement covers this position. A section 218 agreement is a contract the state, political subdivision or instrumentality has entered into with the [REDACTED] under section 218 of the [REDACTED]. A section 218 agreement covers positions and not individuals. The [REDACTED] is the arbiter of coverage issues relating to section 218 agreements. A listing of [REDACTED] Administrators can be found at [www.ncssa.org/](http://www.ncssa.org/). If the section 218 agreement covers this position, then you and the employee are subject to both the social security and Medicare taxes, regardless of the worker's participation in any pension plan, unless the agreement is for Medicare coverage only.

If the position is not covered by a section 218 agreement, the employer and the employee are liable for both the social security and the Medicare taxes on wages paid for services performed after July 1, 1991, unless the worker is covered by a pension plan that meets certain Internal Revenue Service (IRS) requirements. (See section 31.3121(b)(7)-2 of the Treasury Regulations and Revenue Procedure 91-40 for information as to what constitutes a qualified plan.) If the worker is covered by a pension plan that meets IRS requirements, the employer and employee will only be liable for the Medicare portion of the tax on workers hired after March 31, 1986. Contributions to retirement plans are not made retroactively in some states. If that is the case for your state, then the compensation issued to this worker for past services is subject to mandatory social security and Medicare taxes. Section 3306(c)(7) of the Code exempts from the FUTA tax, services performed for any state, political subdivision thereof, or any wholly owned instrumentality thereof. For further guidance and information regarding state and local government workers, please see Publication 963, Federal-State Reference Guide.