

SS-8 Determination—Determination for Public Inspection

Occupation 03INS Helper	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" 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 operating a delivery business and the firm engaged the worker as a helper to move items purchased by customers as needed. The firm notified the worker when jobs were available and times to report to work based on business needs. The firm determined the methods used by the worker to perform the services. The worker was required to contact the firm regarding any problems or complaints for resolution. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided everything needed to perform the delivery services. The worker provided a cell phone. The worker did not incur any significant on-going business expenses. The firm paid the worker a set amount per day for the services 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.

There were no contracts between the firm and the worker. There was a verbal working relationship agreement. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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 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. 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. There were verbal working relationship agreements indicated by the worker. It is noted that whether there is an employment relationship subject to federal employment tax withholding is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties written or verbal. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous 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.