

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Office Cleaner	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 a contract engineering business and engaged the worker through a referral to clean the firm's office at the firm's place of business. The firm indicated they treated the worker as an independent contractor as they do not determine the worker's schedule, supply tools or reimburse expenses. The worker stated the services were performed after hours and no materials were purchased by the worker, they were supplied by the firm. Per the worker the firm told her what jobs to do, where to go to perform services and get supplies.

The worker provided nothing and did not lease anything. The worker did not incur any business expenses but was paid an hourly wage by the firm for providing the services. The worker could not suffer any economic loss and had no financial risk. The worker did not determine the level of payment for the services.

There were no contracts between the parties. The firm did not know if the worker performed similar services for others or advertised as a business. The worker indicated no similar services were performed for others and no advertising was indicated. Both parties 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 capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm had the business investment and control over the costs with regard to the services the worker performed for the firm's business. The firm paid the worker and the worker did not incur any business expenses nor did the firm reimburse any expenses. Everything the worker needed to perform cleaning services was provided. These facts evidence financial control by the firm over the services performed by the worker for the firm's business.

There were no contracts. The worker did no perform similar services for others. The worker did not advertise as a business to the public. The worker did not determine the level of payment for the services. 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.