

**SS-8 Determination—Determination for Public Inspection**

Occupation 03TWP Construction/Technical Services/Trades	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 clay studio business providing items and lessons to customers. The firm engaged the worker to perform finishing work on a part-time as needed and available basis. A verbal working relationship was entered into. The firm assigned the worker jobs to perform and allowed the worker to perform services on a flexible schedule. The worker had experience so no formal training was provided. The firm and worker determined the methods used to perform the services. The firm required the worker to resolve problems or complaints per the firm and the worker indicated the firm's designated studio manager was contacted for resolution of problems or complaints. The worker provided the firm with completed project reports. The worker performed the services at the firm's place of business. The worker performed the services personally.

The firm provided the facility, trimming tools, and customers. The worker provided an apron and protection tape. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a piecework basis and the customers paid the firm for products or services. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products sold and teaching services performed and the firm agreed to the piecework payment made to the worker for services. The worker could not suffer any economic loss and had no financial risk.

There were no written contracts between the firm and the worker. A verbal working relationship agreement was indicated. The firm indicated the worker did perform similar services for others and the worker indicated no similar services were performed for others while performing services for the firm. The firm did not know if the worker advertised as a business to the public and the worker indicated not advertising as a business to the public. Both parties agreed the working relationship could be terminated by either party 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 risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going 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 paid the worker on a piecework basis and the customers paid the firm. The firm had control over the profits and losses with regard to the operation of the business. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The firm determined the level of payment for the products sold and the lessons given to the customers. 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 was a verbal working relationship 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 written or verbal. The firm indicated the worker did perform similar services for others but did not know if the worker advertised as a business to the public. 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 at the firm's place of business on a flexible as needed variable schedule part-time over several years under the firm's business name.

Both parties 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.

We have determined the worker to have been an employee under common law.