

# SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.15 Manager	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

According to the information and documentation submitted, the firm's business is a tax preparation. The worker performed clerical services at the firm's office. The worker's duties included answering phones, data entry, and filing. The firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with training and instruction on using the computer program. The firm provided the worker with her work assignments from its work flow of customers. The worker personally performed her services at the firm's office premises during the firm's normal business hours.

The firm provided all necessary office equipment and supplies for the worker to perform her services. The firm paid the worker an hourly wage for her services. The worker had no investment in facilities. The firm was free to terminate the worker's services, after the tax preparation season ended, without incurring any liabilities.

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**Analysis**

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According to the information and documentation submitted concerning the work relationship, the firm provided the worker with training and instruction. The firm provided the worker with her work assignments. The worker personally performed her services at the firm's office premises during the firm's normal business hours.

The firm provided all necessary equipment, materials, and supplies for the worker to perform her services. The firm paid the worker an hourly wage for her services. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the worker's services without incurring any liabilities.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. See Rev. Rul. 74-389, 1974-2 C.B. 330.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.