

# SS-8 Determination—Determination for Public Inspection

Occupation 05FIW Food Industry Workers	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

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm operates a hot dog stand/restaurant and the worker was engaged to perform miscellaneous services such as a cook, dishwasher, cashier, and janitor. The firm states the worker helped in their restaurant giving assisting them where and when they needed. The firm believes the worker was an independent contractor while performing services for them because they sometimes, but not always, worked around the worker's other jobs and work schedule. The firm reported the worker's earnings on Forms 1099-MISC.

The firm states they provided on-the-job training to the worker. The worker took initiative on his own and he did whatever tasks needed to be done. Standard work procedures determined how the worker performed his services. The worker was required to personally perform his services at the firm's premises. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit reports to the firm or to attend meetings. The hiring and paying of substitutes or helpers did not apply in this case.

The firm states they provided all or most of the supplies to the worker in order to perform her services. The worker did not incur expenses, he was compensated at an hourly rate, and he did not have an opportunity to incur a loss as a result of his services. The firm states they established the level of payment for the services provided.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others but he did not advertise his services. The firm states the worker was represented to their clients as a contractor for their business. Either party could terminate the work relationship at any time without incurring a liability. The worker terminated the work relationship.

The firm states the worker always agreed and accepted a 1099 every year with no hesitation.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm provided the worker with on-the-job training on how to perform his services. The worker provided his services on behalf of the firm rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor. Therefore, the firm's statement that the worker was an independent contractor because he accepted a 1099-MISC at the end of each year is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties or the acceptance of a certain pay document.

A continuing relationship existed between the firm and the worker rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

While the worker may have performed similar services for others, it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.