

# SS-8 Determination—Determination for Public Inspection

Occupation 05FIW.2 Food Industry Worker	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 in the business of baking and selling granola. As the owner of the firm, you engage the worker to assist in baking, packaging, and shipping the product. You reported the worker's remuneration on Forms 1099-MISC for 2013 and the beginning of 2014. You reclassified the worker in 2014 and reported her wages on Form W-2.

Information from the parties supports that you trained the worker. You provide her with her work assignments and the methods by which to perform them. If problems or complaints occur, the worker generally contacts you for resolution. The worker's schedule is determined by your needs and her availability. The worker performs her services on your premises. She attends staff meetings as needed. The worker is required to perform her services personally. If additional personnel are needed, you are responsible for hiring and compensating them.

You provide the supplies, equipment, and the property. The worker does not lease space or equipment, or incur expenses in the performance of her services. You pay the worker at an hourly rate. Customers pay your firm directly at prices that you establish. Neither party indicated an investment by the worker in your firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker does not advertise her services or provide similar services for others. She performs her services under your firm's name.

---

**Analysis**

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you trained the worker. You retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for you on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retain behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. You pay the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retain control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker performs her services under your firm's name. She is not engaged in an independent enterprise, but rather the services the worker performs are a necessary and integral part of your firm's business. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. Although you do not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee for the entire work relationship, and not an independent contractor operating a trade or business.