

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

Occupation 05FIW.10 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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. [REDACTED], accountant for the firm, responded to our request for completion of Form SS-8 on behalf of the firm.

From the information provided the firm is a golf and country club who is open seven days a week for both the public and the owners to use the facilities to play golf, tennis, use the swimming pool, or eat or drink in the 19th hole bar and grill. The worker's job title was cook. He was responsible for cooking food for patrons, washing dishes, working for events, and cleaning the kitchen area. The firm's states during the time the worker performed services, he was working for another company and he was in his 90 day probationary period. The firm states the worker was working a few hours a week and being evaluated on a probationary period prior to becoming an employee. The firm reported the worker's earnings on Forms 1099-MISC; one from Lakeside Golf Club and a second from Hill Realty Company.

The worker was trained in regard to his services as a cook by a family member who also performed services for the firm. The worker did not determine his assignments or how those assignments were completed. If a problem or complaint arose on the job site, the worker was directed to call one of the managers of the club if there was a need to close the kitchen or a resolution to a problem. The firm states the worker was not required to submit reports or attend meetings. The worker's routine was to cook and provide meals for patrons of the bar and grill for about four (4) to six (6) hours a shift one or two days a week.

The worker provided no equipment, supplies, or materials in order to perform his services. The firm states that if the worker bought any food, supplies, or items for a specific meal or the kitchen, he was reimbursed with cash. The firm paid the worker at an hourly rate and he received tips from clients. The firm states the worker did not determine his rate of pay. The worker could not incur a loss as a result of his services. The firm did not carry workers' compensation insurance on the worker.

The firm states the worker performed similar services for others and he was not required to seek their approval in order to do so. The firm states they represented the worker as a cook to the patrons of their club. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship.

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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 worker was given training and instructions from the firm. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker provided his services on behalf of and under the firm's business name 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.

The firm states the worker was considered to be in a "probationary" status to allow them time to consider the merits of retaining the worker permanently and no taxes were withheld from the income. Workers going through a probationary period, even though they may not qualify for benefits, privileges, or seniority protection, still are considered employees for federal employment tax purposes. Payments made to them as compensation for services are wages subject to employment taxes.

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. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, there was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services he performed for the firm and offering those services to the public. It is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting oneself and be an employee of one or all of whom engages him or her. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.