

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

Occupation 05ITE Flight Instructor	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC Flight Instructor	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 a flight training business. The firm engaged the worker to perform flight instructions under an independent contractor agreement for the firm's business. The worker was a qualified instructor and agreed to perform the services to the best of his ability and comply with the firm's lawful policies and procedures in all material respects. The worker represented and warranted to the firm that he was not a party to any employment, consulting, non-competition, confidentiality or other agreements that would inhibit the worker's ability to perform services for the firm according to the agreement. A list of responsibilities was indicated with regard to what services and how services would be performed by the worker for the firm. Other working relationship issues were addressed such as termination, non disclosure, confidentiality etc. The agreement was signed by worker and the firm's flight standards manager.

The firm provided the worker with the firm's policies and procedures training per worker and the firm indicated none provided. The firm assigned worker students to teach flight instructions too per the worker and the firm stated the worker chose students to train. Per the firm FAA determined methods to use to provide the trainings according to federal aviation administration rules and regulations. The worker contacted a firm designated regional manager regarding resolution of problems or complaints per worker and the firm stated the worker was responsible to resolve any. The worker provided the firm with student progress reports and students with feedback reports per the worker and the firm stated invoices were required from the worker. The worker performed the services during firm business hours at firm provided locations where aircraft were housed per worker and per the firm the worker chose hours and schedule and performed services at the customers' airport locations. The worker was required to attend work related meetings when requested by the firm per the worker and the firm indicating not required to attend meetings. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed per worker and the firm indicated N/A.

The firm provided offices, classroom, airplanes, business cards, materials, uniform, and travel related items per worker and firm indicated aircraft. The worker provided an I pad and charts. The worker did not lease space or equipment. The worker incurred expenses for firm required equipment per the worker and the firm indicated none. The firm reimbursed travel and airplane fuel expenses per worker and firm stated travel expenses once. The firm paid the worker a salary and hourly wage for airplane time per the worker and the firm indicated per invoice. The customers paid the firm. The firm did not allow the worker any advances. The firm did carry workers' compensation insurance per firm and worker indicated they did not. The firm determined the level of payment for services and products. The workers' economic loss and financial risks were related to damages of equipment and personal injuries per worker and the firm indicated loss of pilot's license and certification as flight instructor if in violation of FAA regulations.

There was a signed contract provided by the firm indicating the worker to be an independent contractor. The firm did not know if the worker performed similar services for others and indicated there was no restriction on the worker to do so per the firm. The worker indicated no similar services were performed for others while performing services for the firm. The firm stated unknown to worker advertising as a business to the public and the worker indicated no advertising was done by the worker. The firm represented the worker as a certified flight instructor under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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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 on-going business capital outlays with business risk an employer/employee relationship is evident. 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. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. 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 an hourly wage and reimbursed business related expenses. The customers paid the firm for the services performed by the worker and products used to perform the services. The firm determined the level of payment for the services and products. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed contract between the worker and the firm's flight standards manager addressing the working relationship obligations, confidentiality, termination, and other working relationship issues. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the public. The worker performed the services as a certified instructor under the firm's business name for firm customers on a regular and continuous basis over several months.