

# SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.44 Instructor/Teacher	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 a 501(c)(3) church. The firm is providing child care services to customers. The firm engaged the worker through an application process to perform teaching and child care services for the firm's child care service business operation. No formal training was provided. The firm assigned the worker a schedule based on the worker's availability and day care needs. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm and worker determined the methods used by the worker to perform the services. The worker's daily activities were determined by the firm's child care business needs. The firm required the worker to perform the services personally at the firm's day care business facility location. The firm hired and paid substitutes or helpers as needed.

The firm provided equipment, materials, and supplies. The worker provided personal items. The worker did not lease equipment or space. The worker incurred an expense for a uniform. The firm reimbursed the worker for classroom supplies. The firm paid the worker a salary and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided no benefits. The worker did not perform similar services for others. The worker did not advertise to the public as being engaged in a business. 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. In this case the firm engaged the worker to perform services for the firm's child care business operation through an application process. The firm assigned the worker services to perform and schedules to work based on the firm's business needs and availability of the worker. The firm required the worker to contact the firm regarding resolution to any problems or complaints. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to perform the services personally at the firm's day care facility location. The firm hired substitutes or helpers if needed and paid them if they were not volunteering their 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 capital outlays being made with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any 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 provided everything the worker needed to perform the services. The worker provided personal items and a uniform. The worker did not lease equipment or space. The firm reimbursed the worker for any classroom supplies needed. The firm paid the worker a salary and the firm was paid through the customers. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to significant on-going business capital outlays being made. The worker did not have control over profits and losses with regard to the operation of the child care business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business on a regular and continuous scheduled basis at the firm's place of business under the firm's business name. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination 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 without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare). Churches or church-controlled organizations that are opposed to the payment of social security and Medicare taxes and that have filed Form 8274 for exemption do not pay social security and Medicare taxes. Their employees, however, are subject to self-employment tax. Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.

For more detailed information, you may obtain Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers by calling 1-800-TAX-FORM.