

# SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.98 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

## Facts of Case

The firm is operating a yoga studio and engaged the worker to teach yoga classes on a flexible schedule basis. The firm did not provide any training on the program but did provide instructions on business operations. The firm assigned the worker schedules to work based on the worker's availability and firm's business needs. The firm and worker determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker provided the firm with work related invoices. The worker performed the services at the firm's studio. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the place of business, equipment, and materials needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker a set amount per class taught 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 but there was a verbal agreement per the firm. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker advertised her services by word of mouth. Both the firm and the worker 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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. Also when a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. 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 capital outlays 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 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. 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 a set amount per class taught and the customers paid the firm. The firm determined the level of payment for the services paid by the customers and paid to the worker. The worker could not suffer any economic loss and had no financial risk. 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 other than a verbal working relationship agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services for the firm's business customers under the firm's business name over a period of several years on a flexible scheduled basis.

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.