

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

Occupation 05PRW Debt Consultant	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 offers debt settlement services for credit card customers. The worker performed debt solicitation services by making phone calls to potential customers from home. The firm indicated the worker had prior experience so training was not needed. The worker stated the firm provided system training in order to perform the services efficiently. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm to resolve problems or complaints. The worker performed services on a flexible schedule from home and from the firm's business location. The worker was not required to perform the services personally per the firm and worker indicated being required to do so.

The worker provided his own equipment at home and the firm provided equipment at the firm's office. The worker did not lease anything. The worker incurred personal item expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm and worker disagreed on who determined the level of payment for services and what economic loss and financial risk the worker could incur with regard to performance of services.

There was a signed independent contractor agreement provided. The firm and worker disagreed on if the worker performed similar services for others while performing services for the firm. The worker did not advertise as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

The contract was for services and the company may request other services in the future. The worker would perform services as needed and provide the equipment needed to perform the services. The worker was responsible for all personnel costs. The worker was required to notify the firm of any schedule changes 2 weeks prior to changes. The worker would be paid a set amount annually + commissions on customers debt within 15 days of submitting an invoice. The agreement could not be reassigned by either party without the other parties' written consent.

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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. The firm had control over the services and retained the right to request the worker perform other services in the future. The issue that the worker had a flexible working relationship, could perform services from home, and used personal equipment would not make the worker to be an independent contractor. The firm had the right to determine what, how, when and where the services were performed and could change the services at the firm deemed necessary for business purposes. 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. In this case, the worker had no significant on-going financial investments in a business and did not incur any significant on-going business expenses. The firm had the business investments 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 on a salary + commission basis and the customers paid the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker could not suffer any economic loss and had no financial risk with regard to performance of services. These facts evidence financial control by the firm over the services performed by the worker.

An Independent Contractor Agreement was provided indicating the firm requested the services to be perform for the firm's business and the firm may request the worker to perform other services in the future. The worker was required to provide the necessary equipment to perform the services. The worker was required to provide the firm with 2 week notice of any change to worker's availability schedule. The firm agreed to pay the worker a yearly salary + commissions based on client debt within 15 days of invoicing for services. The firm agreed to provide the worker with the necessary qualifications to perform the services under the firm's license and authority. The agreement addressed confidentiality, liability, and other issued with regard to the working relationship.

Both parties 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.