

# SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Aides/Assistants	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 dental office. The firm engaged the worker through an employment agency to perform temporary dental hygienist services for the firm's business. The worker was licensed and experiences so formal training was not needed. The firm provided the worker with business practices and procedures training and instructions. The firm assigned the worker work schedules based on the firm's business needs. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the temporary employment agency regarding problems or complaints for resolution per the firm and the worker indicated contacted the firm or the agency for these types of issues. The firm required the worker to complete patient charts on services performed. The firm required the worker to perform the services at the firm's place of business personally. Substitutes or helpers were provided by the temporary agency per the firm and the worker stated the firm hired them if needed.

The firm provided everything the worker needed in order to perform the services. The worker provide a license and personal items. The worker did not lease anything or incur any business expenses. The firm paid the worker a daily rate of pay for the services and the firm was paid through customer resources. The firm and temporary agency determined the level of payment for the services. The firm stated the worker's economic loss and financial risks were damages of equipment in the office and worker indicated none to this issue.

There were no contracts between the firm and worker. The firm provided no benefits. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did not advertise as a business to the public. The firm referred to the worker by name as a temporary hygienist 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 capital outlays with business risks 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 paid the worker a set amount per day and the firm was paid through the customers resources. The firm established the level of payment for the services. The risk of damages to equipment would not be considered having control over profit and loss in the costs associated with the operation of a 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 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 did not advertise to the public as being engaged in a business. The firm referred to the worker by name as a temporary dental hygienist to the customers.

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.

Based on the information provided by both the firm and worker we have determined the worker to be an employee under common law.