

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

Occupation 07ESW.12 Enforcement/Security	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 security provider business. The firm engaged the worker to perform security guard services for the firm's business operation. The firm assigned the worker services to perform originally and subsequently allowed the worker to choose jobs to perform per the firm. The worker stated he has been performing the same services for the firm since 2013. The firm assigned jobs according to the firm's clients requests. The firm, worker, and client determine the methods used to perform the services. The worker contacted the firm or firm's client regarding problems or complaints for resolution. The firm required the worker to provide the firm with daily logs and incident reports if needed. The worker's daily routines and schedules are determined by the firm's clients. The worker performed the services at the firm assigned job sites of clients. The firm required the worker to perform services personally. The firm hired and paid substitutes or helpers directly or indirectly with the firm's clients approval.

The firm provided uniforms, the worker provided a license, and the firm's client provided special equipment if needed. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage. The firm was paid by the client. The firm carried worker's compensation insurance. The firm and firm's client determined the level of payment for the services and then the firm offered the worker jobs based on the agreement with the client. The worker could not suffer any economic loss and had no financial risk with regard to the services performed.

There were no contracts between the firm and the worker. The worker did not perform similar services for others per the worker and the firm stated unknown if worker did or not and was not prohibited from doing so. The firm did not know if the worker advertised as a business to the public and the worker indicated he did no advertising as a business to the public but advertised the firm's business by wearing the firm's business uniforms. The firm referred to the worker as a security guard working under the firm's business name. 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 allowed the worker to select jobs and follow the firm's clients instructions on what, how, when and where to perform the services. 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. The worker was experienced and licensed so no formal training was provided by the firm. The worker contacted the firm or firm's client regarding any problems or complaints for resolution. The firm required the worker to provide daily logs and/or incident reports with regard to the services performed. The firm required the worker to perform services personally at the firm's clients job sites once accepted according to the firm's clients wants and needs. The firm hired and paid substitutes or helpers if needed directly or indirectly through the firm's clients approval. 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 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 clients. The firm paid the worker an hourly wage based on the agreements with the firm's clients. The clients paid the firm. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. The firm carried workers' compensation insurance. 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 firm stated the worker was not prohibited from doing 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 as a business to the public but rather advertised the firm's business by wearing firm provided uniforms when performing services for the firm's business clients.

The firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.