

# SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.76 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 dance lesson business. The firm engaged the worker to provided dance instructions as needed. The firm assigned the worker jobs to perform and provided basic training and instructions on dance steps. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm regarding any problems or complaints for resolution that the worker was not able to resolve. The worker provided the firm with verbal work reports. The firm required the worker to perform the services personally at the firm's place of business. The firm hired substitutes or helpers and paid them if needed.

The firm provided the place of business, equipment, and materials needed by the worker to perform the services. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a piecework basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services.

Per the firm there was a verbal working relationship agreement. The worker did not perform similar services for others or advertise as a business to the public. The firm referred to the worker as a dance instructor 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. In the case the firm engaged the worker to provide dance lessons as needed. The firm contacted the worker when jobs were available to perform. The firm provided the worker with initial training on dance steps to use. 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 contact the firm regarding any problems or complaints for resolution that could not be handled by the worker. The firm required the worker to perform the services personally at the firm's place of business. Substitutes or helpers would be hired by the firm and paid by the firm if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the place of business, equipment, and materials needed by the worker to perform the services. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a piece work basis and the customers paid the firm. 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 made not the risk of losses being incurred with regard to performance of services for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a verbal working relationship agreement indicated by the firm. 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 verbal or written. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business at the firm's place of business as needed 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.