

# SS-8 Determination—Determination for Public Inspection

Occupation 07ESW.1 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 provides security services to the clients. The worker was engaged to provide his services as a security guard. His duties were to provide security services at two of the firm's clients.

The firm did not offer any training to the worker however did provide instructions at the onset of employment on what his job duties were going to be. The worker received his assignments from the owner of the firm. The firm retained the right, to determine or change the method used by the worker in the performance of these assignments. The firm was also contacted for resolution if problems or complaints arose as a result of the worker's services. The worker was required to submit a report on what took place during his shift. The worker provided his services on a schedule determined by the firm. The worker provided his services at various locations and provided these services personally.

The firm provided anything that was need for the worker to perform his services. The worker did not lease any equipment. The worker only provided his services. The worker did not incur any expenses therefore reimbursement by the firm was not required. The customers paid the firm and the worker received remuneration in the form of an hourly wage. The firm did not offer any benefits to the worker such as paid vacation or sick days however it is unknown whether the firm carried worker's compensation insurance on him. The worker did not have a financial investment in the firm and therefore could not realize a profit or incur a loss as a result of his services.

There was no written agreement describing the relationship. The worker did not provide similar services for others while employed by this firm. The worker performed services in the firm's name. The worker did not advertise his services or hold himself out to the public as available to provide similar services, and did not keep a business listing. The worker's relationship with the firm was continuous as opposed to a single transaction. Both parties retained the right to terminate the relationship without incurring liability, and in fact, the relationship has ended.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect their financial investment. The worker performed his services on a continuous basis. Work was performed on the premises of the firm's clients. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services while employed by this firm. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. The worker did not hold his services out to the general public or carry a separate clientele. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.