

# 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 dentist performing dental services and engaged the worker through an employment agency to perform part-time dental hygienist services. The firm provided the worker with business practice training and assigned worker jobs to perform daily. The firm provided the worker with schedules to worker and determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker complete and provided the firm with patient care reports on services performed. The worker performed the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items and did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for services and products sold. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

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. The firm referred to the worker as a dental hygienist to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

---

**Analysis**

---

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 on-going business 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 significant on-going 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 an hourly wage and the customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. The worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's approval. 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 no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous as needed flexible scheduled basis under the firm's business name for about 6 months.

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 we have determined the worker to be an employee under common law.