

# SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.220 OfficeWorker	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 a automobile dealership business. The firm engages the worker as needed part-time to perform office work for the firm's business and has paid the worker as an employee in prior years and in year 2015 issued the worker a Form 1099-MISC for the same services. The worker retired from performing clerical work for the firm's business and subsequently agreed to work part-time as needed since retirement in 2003 per worker. The firm's designated office manager assigns the worker services to perform. The firm and worker determine the methods to use to perform the services. The firm requires the worker to contact the office manager regarding any problems or complaints for resolution. The worker performs the services at the firm's office. The firm does not require the worker to perform the services personally.

The firm provides a computer and office supplies. The worker does not lease equipment or space. The worker does not incur any business expenses. The firm pays the worker an hourly wage and the customers pay the firm. The firm carries workers' compensation insurance. The firm determines the level of payment for the services. The worker can not suffer any economic loss and has no financial risk with regard to the services being performed for the firm's business operation.

There are no contracts between the firm and the worker. The worker does not perform similar services for others or advertise as a business to the public. The firm refers to the worker as temporary help to the customers. Both the firm and the worker retain the right to terminate the working relationship at any time without incurring any liability.

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**Analysis**

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The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Therefore it is our determination that the worker is a employee for federal employment tax purposes for all years the worker has been performing the same services for the firm's business operation.