

# SS-8 Determination—Determination for Public Inspection

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| Occupation<br>OFF02.246 AdministrativeAssist | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC   | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

## Facts of Case

The firm is a carpet and flooring sales and installation business. The worker was engaged as an administrative assistant, to perform secretarial, clerical, and bookkeeping services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker was trained by the firm's previous assistant. The worker performed all office functions on a daily basis, and reported to the firm's president/owner. Work methods were determined by the owner/president. Work related issues were resolved by the worker and the owner/president. The worker performed her services personally at the firm's location. She was required to provide reports regarding monthly profit and loss, and monthly balance sheets done via [REDACTED].

The firm provided the facilities, office equipment and supplies needed to perform the services. The worker provided nothing, and did not incur work related expenses. The firm paid the worker on an hourly wage basis for her services. The worker did not incur economic loss or financial risk related to the services she performed for the firm.

The firm carried workers' compensation insurance on the worker. No employment benefits were made available to the worker. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities. There was no information provided to evidence that the worker advertised her services, or that she performed similar services for others while engaged by the firm.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's training, instructions, and work methods in the performance of her services. The worker's services were performed personally at the firm's location, using its equipment, tools, and supplies. The worker represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)