

# SS-8 Determination—Determination for Public Inspection

Occupation Construction, Trades & Technical Services	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 cleaning and painting business. The worker was engaged as a laborer, to perform cleaning services at the firm's job locations. The firm treated the worker status as both employee and independent contractor, issuing to the worker both Form W-2 and Form 1099-MISC at year-end to report the monies she received for her services as wages and non-employee compensation.

The firm provided the worker with instructions on how to perform the cleaning services. The firm's owner provided the work assignments, and determined the work methods to be used to perform the services. The worker contacted the firm's owner regarding problems that needed resolution. The worker performed her services with helpers that were engaged by the firm. Services were performed at the firm's job sites.

The firm provided the worker with the cleaning equipment and supplies needed to perform the services. The worker did not provide any items needed to perform her services, and did not incur work related expenses. The firm paid the worker on an hourly wage, plus piecework basis, plus lump sum basis for her services. Clients paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services she performed for the firm.

The firm did not cover the worker under workers' compensation insurance. There was no information provided in this case to support that the firm made employment benefits available to the worker. There was no information provided in this case to support that the worker performed similar services for others, or that she advertised her services to the public. The worker relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

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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 instructions, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools, and supplies and she 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 her 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)