

# SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.12 MiscLaborServices	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 in the business of operating a warehouse complex. The worker was engaged to clean storage units, assist customers and assist the property manager as directed. She received a 2013 Form 1099-MISC for her services. There was no written agreement.

Both the firm and the worker agreed that the firm provided instructions as needed to complete tasks; only the worker mentioned that training was provided. Both parties agreed that the worker received her work assignments from the firm's property manager who determined the methods by which the assignments were performed and would be contacted if any problems arose. Both also agreed that no written reports were required. The firm noted that the worker worked part-time with a flexible schedule; the worker noted that she worked set scheduled hours but that on some days she would leave early and come in late due to lack of work. All of her services were performed at the firm's location. There were no required meetings to attend. Only the firm noted that the worker was to provide the services personally. The worker noted that only the firm would hire and pay any substitute workers.

The worker noted that the firm provided everything that she needed to perform her services; the firm noted that it provided minor supplies. Both parties agreed that the worker was paid an hourly rate and had no other economic risk; in fact the firm pointed out that the worker caused damage with no resulting consequences. Both parties agreed that the customer paid the firm. Both also agreed that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker's services were terminated by the firm.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

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 its financial investment. The firm engaged the worker to assist its property manager. The firm provided the worker with her task instructions and her assigned duties. She performed her services according to the firm's scheduled work hours and days even if she was a temporary worker on a part-time basis. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. Even if considering that the worker had a flexible hourly schedule, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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. The worker simply received an hourly rate of pay and had no other economic risk. The firm provided the workplace, along with any equipment and supplies needed by the worker. In addition, payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

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. There were no benefits and there was no written agreement. The worker provided a variety of services as an assistant whether it was cleaning rental units or working in the office. She was not engaged in activities that were independent in nature but rather the services were 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 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.