

# SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.43 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 a contractor providing assembly and installation services of locker and shelving units for commercial businesses. The worker was engaged as an installer. The firm treated the worker as an independent contractor and issued to him a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received training from the firm on how to install and remove the pallet racking, and how to operate the forklift equipment. The firm provided daily work assignments to the worker. The firm and its customer determined the work methods by which to perform the services. The firm was contacted to resolve issues. The worker performed his services personally, at customer locations.

The worker provided his own tools and supplies needed to perform his services. The firm's customer also provided supplies, and the materials and heavy equipment needed to perform the services. The worker incurred expenses for fuel, clothing, food, and supplies. The firm reimbursed the worker for work related purchases. The firm invoiced the customer for services rendered. Customers made payment to the firm, and the firm paid the worker on an hourly wage basis for his services. The worker did not incur economic loss or financial risk related to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did he advertise as being available to perform similar services for others while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction, 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, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at job sites designated by the firm. The worker performed services under the firm's business name, at the firm's customer locations. 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 he performed his 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)