

# SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Repair/Maintenance Workers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

**For IRS Use Only:**

## Facts of Case

Information provided indicated the firm provided mechanical services. The worker performed services as an automotive technician. The firm reported the income on both Form W-2 and Form 1099-MISC. The firm indicated the worker requested not to have taxes withheld. He did not wish to be an employee after two weeks. The firm indicated work assignments came from the manager of the firm. The firm stated the worker came in regularly in the mornings and leave early as he finished his daily tasks. Work was performed on the firm premises. The firm had indicated they had provided the lift, compressor and jump box. The worker provided his own tools. The firm indicated the worker was paid on salary. The customer paid the firm. The firm determined the rates charged. The firm indicated the worker was also given sick days and personal days. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The firm indicated they went out of business.

The worker agreed his work assignments came from management. He stated he would open shop, move vehicles, repair or modify and deliver vehicles to the customers. He agreed all work was performed on the firm premises. He agreed the firm provided the garage space, and above ground hoists. He provided his own tools. He indicated he did not lease the space. He agreed he was paid on salary and the customer paid the firm. He stated pay checks were issued alternately between managers. He agreed the partnership dissolved. Consequently they never withheld taxes

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## Analysis

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We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The firm had indicated the worker had been paid as an employee, and had requested to be changed to an independent contractor. However, the firm continued to direct the work assignments and services were performed under the firm's business name and reputation.

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 was paid on salary, indicating no opportunity for profit or loss. The firm determined the rates charged to their customers, and was paid directly for the work performed by the worker. The worker did not rent or lease the space he utilized. The customers did not pay him directly for the work he performed.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

### CONCLUSION

Based on the above analysis, we conclude this is an erroneous misclassification of employment. There are specific employment tax rules that determine whether an person is an employee or if they qualify as an independent contractor. It is never a matter of choice. The firm determined the work assignments, provided the space and equipment for the work to be performed. The customers contacted and paid the firm for the services received to their vehicles. The worker was paid on salary for the work performed, indicating no opportunity for profit or loss. Therefore we find 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.