

**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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a janitorial cleaning business and the worker was engaged to clean offices as a cleaner. The firm believes the worker was an independent contractor (IC) while performing services for them because she wanted to sub-contract the work. The worker cleaned two offices for a period of six (6) weeks in 2017. The firm reported the worker's earnings on a Form 1099-MISC.

The firm states the worker was trained by another worker and she was given verbal instructions in regard to her services. The worker's assignment was to clean the same two buildings every day five (5) days a week. The firm states they determined how the worker performed her services and the worker was to notify them if any problems or complaints arose for their resolution. The worker was required to submit a W-9 form to the firm and the firm states the buildings the worker cleaned were checked periodically. The worker performed services approximately 45 hours per week at the two buildings she was assigned to clean. The firm states the worker did not attend meetings but periodically they would stop to talk to her. The firm states the worker was responsible for hiring any helpers and she was responsible for paying them. The firm states that the two buildings assigned to the worker could have been cleaned by one person and it was the worker's choice if she wanted someone to help her as long as they knew who was in the premises.

The firm provided all vacuums, mops, bucket, chemicals, gloves, and all other equipment and supplies to the worker needed to perform her services. The worker did not incur any other expenses other than transportation to work. The firm states the worker received a monthly salary and she was required to have her own insurance. The worker did not establish the level of payment for the services provided and the firm states they incurred the expense of the managing contract administrative fee and equipment.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others and they do not know if she advertised her services. Either party could terminate the work relationship at any time without either party incurring a liability. The firm terminated the work relationship with the worker.

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## Analysis

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As in this case and 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, the worker's assignment was to clean two buildings which the firm had under contract. The firm determined how the worker performed her services and they performed spot checks on the buildings to see if the worker was performing services to their standard. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The fact that the worker may have requested to subcontract the work is irrelevant. If an employer-employee relationship exists, the firm is obligated by law to withhold the appropriate employment taxes.

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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, there was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services she performed for the firm and offering those services to the public. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages them.

The firm states the worker provided her own insurance however, did not provide proof of this. Even if she did provide her own insurance and the obtaining and paying for liability insurance is a characteristic of an independent contractor, the total relationship needs to be analyzed to make an accurate decision of a worker's status. If a worker is required to provide insurance in order to obtain a job or as a condition of employment, the factor that the worker possesses insurance loses weight in determining the worker's status as an independent contractor.

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.