

**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**

The worker completed an application for the job. The worker stated that she was trained by another employee of the company. The firm asserted there was no training provided because the worker was hired due to her prior experience. The worker received instructions regarding the services to be performed from the firm via email or text. The firm stated all workers received assignments from an application on the phone. The worker stated the she would receive her assignments on a daily basis and go to the shop to pick up supplies. The firm stated that there was no set schedule or hours, services provided by he worker depended on what jobs were available. The parties disagree on who determined the methods by which the services were performed. The worker contended the firm determined her methods whereas the firm claimed that the worker was to use her prior experience to accomplish her duties effectively. The firm was responsible for problem resolution. The worker was required to clock in and out using an application on her phone. The firm stated no reports were required. She performed services on the premises of the firm's customers. The worker stated that she was required to attend daily meetings. The firm stated that there were no meetings that the worker was required to attend. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

The firm furnished the worker with cleaning supplies and cleaning equipment, at no expense to her. The worker did not furnish any of the tools or equipment used in performing the services. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the worker's services at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform similar services for others. She did not advertise her services to the public, or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The firm stated that workers were represented as part of a team of the firm. The relationship between the parties ended when the firm terminated the worker.

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**Analysis**

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. Although it was stated reports were not required, it is reasonable to assume the firm's customers could not be properly billed without the work orders. 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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "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. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she completed out an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.