

**SS-8 Determination—Determination for Public Inspection**

Occupation 03PMW.42 Repair Maintenance Worker	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 condominium management. The worker provided his services to the firm in 2012 through 2014 as a repair and maintenance worker performing services such as roof repairs, concrete repairs, and electrical, and received the Form 1099-MISC for the services he performed in 2013.

The worker stated that the firm instructed the worker to do all the tasks the job required. The firm contends that there was no training or instruction provided. The worker received his assignments from the firm’s office, a call log, or the firm’s owner via text message. The worker explained that in the beginning of the relationship the firm determined the method by which the assignments were performed, and then in later years the worker determined the methods by which the assignments were performed. The firm stated that the worker determined the methods by which the assignments were performed. If problems or complaints arose, the worker was required to contact the firm’s owner and the owner was responsible for problem resolution. The firm required the worker to submit daily descriptions of his completed work, the time it took to complete, and a biweekly time sheet with his hours worked. The worker’s schedule varied, he called the firm’s office to see if he was needed to work that day, and he would check his call log. He provided his services personally on the firm’s premises, and the firm’s customer’s premises. The worker reported that he was required to often meet with the firm’s contractors to show them what work firm’s owner wanted. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; the vehicle, gas card and [REDACTED]. The worker provided his hand tools and his truck because he felt the firm’s vehicle was unsafe to drive. The firm asserted that the supplies were obtained by the worker at the firm’s customer’s expense. The worker did not lease any equipment and was reimbursed by the firm for any business expenses incurred in the performance of his services. The firm maintains that there were no expenses incurred by the worker. The worker received an hourly wage for his services and it was agreed the he live in the firm’s owner’s condominium with the rent deducted monthly from the worker’s pay. The firms’ customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The worker stated that the firm established the level of payment for the services that he provided. The firm contends that the worker established the level of payment for the services he provided for the firm.

The firm provided the worker with benefits through 2012 and then in 2013 they did not make any benefits available for the worker. The worker did not perform similar services to others during the same time period. The firm indicated that the worker did perform similar services to others during the same time period. The worker provided his services under the firm’s business name. The firm expressed that the worker provided his services for the firm under his own name. Both parties retained the right to terminate the relationship without incurring liability.

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## Analysis

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The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

There was a written contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of his services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. The worker had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the worker has an investment in hand tools is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. His pay was based on an hourly rate. 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. 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, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Either the firm or the worker could terminate the agreement.

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.