

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

Occupation 03PMW.52 RepairMaintenanceWorker	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 an s-corporation in the business of professional cleaning services which engaged the worker as a maintenance worker from 2009 to 2014. The firm provided a copy of an independent contractor agreement believing that this should be a clear indication that the worker agreed that she was a contractor. However, Federal guidelines stipulate that this agreement in of itself cannot be considered in the SS-8 determination process, as we are obligated to base our decisions on the actual relationship between the parties, which is the controlling factor, and not the terms of the contract either oral or written.

The worker stated the firm provided training, instructions, and supervision as to the details and means by which the worker was to perform the services. For example, the firm’s procedure for floor waxing, carpet cleaning, and cleaning tile and grout. The firm stated the worker was not given any training or instructions because the worker represented himself as an experienced, qualified contractor. The firm’s web site indicates its services are “detail oriented and does not cut corners” which coincides with the statement of the worker that he was trained and instructed to the firm’s procedures. The worker received written instructions in the form of a work order regarding the services to be performed. The firm also stated the worker received verbal instructions. The worker submitted documentation that he performed services for the firm’s customers ranging from 96-121 hours bi-weekly, and received regular bi-weekly remuneration for his services based on hourly pay. Performing services such as sweep floors, dusting, wash windows, clean police parking lots, wax floors, shampoo carpet and clean tile and grout. The worker stated the firm determined the methods by which the assignments were performed. The firm stated the worker determined the methods. Although the parties disagreed on who determined the methods in which the worker was to complete his assignments, it is believed that the worker may have developed his own methods but the firm retained the right to change the worker’s methods in order to protect its business interests. The firm was ultimately responsible for problem resolution although, the worker was required to resolve any performance issues. The firm stated the worker was only required to provide an acknowledgement of work done, but the worker submitted documentation as evidence to prove he was required to submit bi-weekly written reports indicating what services were performed for the firm’s customers and how much time it took to complete each task. He performed the services on the premises of the firm's customers. The worker was required to wear a uniform. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally or the firm would supply a responsible replacement. The worker stated he worked exclusively for the firm. The firm stated he did provide similar services for others but internal research indicates the worker did not provide the same services for others. The time sheets provided indicates the worker did not have time to provide services to others as well. His services were an integral and necessary part of the services the firm provided to its customers.

The worker stated the firm furnished the worker with workspace, cleaning supplies, floor machines and cleaning equipment, at no expense to him. The worker did not furnish any of the tools or equipment used in performing the services, except for the use of his cell phone and the use of his personal vehicle occasionally to do part time work for the firm. The worker did not lease equipment. The firm provided a work van that the worker drove; thus, he did not have a significant financial investment in the firm’s materials. The firm denies providing anything to the worker except for heavy equipment. The firm stated the worker provided all other equipment, a vehicle and a vacuum cleaner. The firm further stated that its customers provided the cleaning chemicals and paper products. This contradicts the firm’s web site which states the firm has commercial cleaning, green cleaning and chemical hazards certification which indicated the firm uses specific cleaning supplies, not the supplies of its customers. The firm determined the fees to be charged to its customers. While using the firm’s work van the worker was reimbursed for tolls, and gas. The worker was paid an hourly wage. The firm’s customers paid the firm. 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.

Either party had the option to terminate the worker’s services at any time without incurring a penalty or liability. All work produced became the property of the firm. The worker did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. The firm stated the worker was required to perform the services under the name of the firm and for the firm's clients, and the worker was not a partner of the firm. The firm’s web site supported the fact that the worker performed services in the firm’s name and was represented as staff of the firm.

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**Analysis**

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The worker performed personal services on a continuous basis for the firm's customers. Work was performed on the firm's customer's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. 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. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. 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.