

## SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.71 RepairMaintenanceWorker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the cleaning service business. The firm engaged the worker through an application process to perform cleaning services for the firm's business. The firm provided the worker with job instructions and assigned the worker services to perform based on the firm's business needs. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker's daily routines varied based on the job assignments. The firm required the worker to perform the services at the firm's customers locations. The worker performed the services personally and per the firm the worker was not required to do so, did not need the firm's prior approval to hire substitutes or helpers, and would not be reimbursed for any payments made to them. The worker indicated being required to perform the services personally and the firm hired and paid substitutes or helpers if needed.

The firm provided everything the worker needed in order to perform the services. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. Based on the firm's business needs the firm provided the worker with job instructions and assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding resolution to any problems or complaints. The firm required the worker to provide the firm with time reports on services performed. The firm required the worker to perform the services at the firm's customers locations. The worker performed the services personally on a variable scheduled basis depending on the firm's business needs. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided everything the worker needed in order to perform the services. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm's business. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's customers job sites on a regular and continuous basis under the firm's business name over a period of about 2 months. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.