

# SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.79 RepairMaintenanceWkr	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 a non-profit firm theater. The worker is engaged through [REDACTED] to perform services for the firm as a custodian. The firm does not withhold taxes from the worker's remuneration.

Information from the parties supports that the firm provided the worker with its expectations at the beginning of the work relationship. The worker's work assignments are the same each week. If any adjustment is needed, such as cleaning a particular area, a note is left for the worker. The worker is supervised by his job coach. If problems occur, [REDACTED] contacts the firm for resolution. The worker determines his own hours and work schedule, but generally reports every Monday at 9:00 a.m. and works until duties are finished, at approximately 1:00 p.m. The firm stated that the worker is not required to perform his services personally.

The firm provides all cleaning equipment and supplies. The worker does incur expenses in the performance of his services. The firm pays the worker at a weekly rate. It does not cover him under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm does not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The firm stated that it does not prohibit the worker from providing similar services for others. The worker does not advertise his services or maintain a business listing.

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## Analysis

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Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm provided the worker with its expectations and provides the worker with any adjustments it needs, showing the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Although the firm states that the worker is required to perform his services personally, there is no indication that he can engage and pay others to perform services for the firm on his behalf. These facts show that the firm retains behavioral control over the services of the worker.

Factors that illustrate whether there was 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, does 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The firm pays the worker at a weekly rate. Payment by the week generally points to an employer-employee relationship. These facts show that the firm retains control over the financial aspects of the worker's services.

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 performs his services on a continuing basis. The worker is not engaged in an independent enterprise, but rather the custodial services performed by the worker are a necessary and integral part of the function of the firm's business. 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 business. Although the firm does not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.