

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

Occupation

03PMW.81 RepairMaintenanceWorker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a pressure cleaning service business. The firm engaged the worker to perform pressure cleaning services for the firm's business operation. The firm indicated no training was provided and the worker indicated he received instructions on the operation of equipment and how to clean different surfaces. The firm assigned the worker services to perform as available and scheduled by the firm. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's hours varied based on the job assignments and firm's business needs. The worker performed the services at the firm's customers locations. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided transportation, equipment, materials, and supplies. The worker provided a uniform per the worker, the firm indicated cleaning supplies, car, and spray wand. The worker did not lease equipment or space. The worker incurred personal item expenses and no expenses were reimbursed by the firm. The firm paid the worker an hourly wage. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services paid by the customers and negotiated the worker's hourly wage payment per the firm. The firm indicated the worker's economic loss and financial risk were related to any damage to equipment or property. The worker indicated he could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others while performing services for the firm. Per the firm there were not any no-compete agreements and worker had his own business for the same services performed as the firm's business while working for the firm. The firm did not know if the worker advertised as a business to the public. The firm referred to the worker as a contracted helper under the firm's business name to the customers per the firm. Both parties 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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business until the end of the working relationship and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business operation. The firm provided equipment, materials, and supplies. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going 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 and products used in performance of the services. The worker could not suffer any economic loss due to on-going business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the performance of the services for the firm's business operations. These facts evidence financial control by the firm over the services performed by the worker. The risk of damages to equipment or property would not be considered having control over profit and loss in the operation of a business. There were no legal documents provided showing this to be a liability the worker could be responsible for.

There were no contracts between the firm and the worker. There were not any no-compete agreements provided. The firm indicated the worker did perform similar services for others while performing services for the firm and had his own similar business while working for the firm. The worker indicated no similar services were performed for others while performing services for the firm. The worker's similar business does not show it was established until towards the end of this working relationship. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker indicated he did no advertising as a business to the public and the firm indicated unknown to this issue. The worker personally performed services for the firm's business customers under the firm's business name at the firm's customers job sites on a regular and continuous as needed basis over several months and was paid under his name and Social Security Number and not under the business name and Employer Identification Number during the working relationship.

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.