

# SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.86 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 a condominium association who engaged the worker through a referral to perform cleaning services at the condominium. The firm assigned the worker services to perform and determined the number of hours weekly the worker performed the services. The firm and worker determined the methods used to perform the services. The worker contacted the firm or designated property manager regarding any problems or complaints for resolution. The firm required the worker to provide the property manager with job completion reports. The worker provided the firm with manager approved time sheets every 2 weeks for the services. The worker performed the services during an established work schedule at the firm's property location. The worker performed the services personally per the worker. The firm indicated the worker was not required to perform the services personally and did not need the firm's prior approval to hire substitutes or helpers. Per the firm if the worker hired any substitutes or helpers the firm would not reimburse the payment.

The firm provided all cleaning equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the firm was paid through the associations resources. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. Per the firm the worker determined the level of payment for the services. The firm determined the number of hours they would pay for the services.

There were no written contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker stated no similar services were performed for others. The firm did not know if the worker advertised as a business. The worker indicated not applicable to advertising as a business. Both parties agreed the working relationship could be terminated by either party 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. In this case the firm engaged the worker through a referral and assigned the worker services to perform. The firm determined the number of hours per week the firm would pay for the services. The worker performed the services during an established work schedule and as needed. The firm and the 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 or firm's designated property manager regarding any problems or complaints for resolution. The firm required the worker to provide the firm's property manager completion reports and submit manager approved time sheets every 2 weeks. The worker personally performed services at the firm's property location. 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 and did not incur any 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. The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage and the firm received income through the association resources. 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 firm indicated the worker and firm entered into a verbal independent contractor working relationship agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. 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 did no advertising to the public as being engaged in a business operation. The worker personally performed services for the firm's business at the firm's property location on a regular and continuous part-time basis over several 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.