

## SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.106 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm operates a janitorial service for commercial and industrial facilities. The worker was engaged to perform general janitorial services. The firm treated the worker status as both employee and independent contractor. The firm issued to the worker Forms W-2 and Forms 1099-MISC at year end to report the monies received for his services as both wages and non-employee compensation.

The firm assigned jobs to the worker and provided him with a checklist. The firm and worker both determined the work methods by which to perform the services. The worker performed his services personally at customer locations following a set schedule. Work related issues were reported to the firm for resolution purposes.

All equipment, tools, and supplies were provided to the worker. Neither party provided information to support that the worker incurred work related expenses, or that he incurred economic loss or financial risk related to the services he performed for the firm. The worker was paid a lump sum based on an hourly wage. Customers paid the firm for services rendered.

The firm carried workers' compensation insurance on the worker, and made employment benefits available to him. There was no information provided to support that the worker performed similar services for others, or that he advertised his services to the public, while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction, and could have been terminated by either party at any time without incurring liabilities.

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**Analysis**

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The statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used supplies and materials provided to him, and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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 owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)