

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

Occupation 03PMW.118 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 provides laundry and cleaning services under the name of [REDACTED]. As the owner of the firm, you engaged the worker to provide laundry services. You reported the worker's remuneration on Forms 1099-MISC for 2012 through 2015.

You submitted the "Work for Hire Agreement" between the parties, stating among other things, that the agreement may be terminated by either party upon 10 days written notice to the other party; it is understood that the worker is an independent contractor, and not an employee; the firm will not provide fringe benefits, including health insurance benefits, paid vacations, or any other employee benefits; any work products remain the property of the firm; the worker will return all records, notes, documentation, and other items used during the term of the agreement; and the worker will maintain appropriate insurance coverage for her benefit and the benefit of her employees for any injuries sustained while performing services for the firm.

Information from the parties supports that you relied upon the worker's prior training and experience to perform her services. Her work assignments were dependent upon your customers' requests. If problems or complaints occurred, the worker was responsible for resolving them. You allowed the worker to choose her work hours. She maintained a routine schedule. The worker performed her services on your firm's premises. She was required to perform her services personally.

You provided the washing machines, dryers, detergent, the press, and the property. The worker used her own vehicle for deliveries. The worker did not lease space or equipment, or incur expenses in the performance of her services. You paid the worker at an hourly rate. You did not cover her under workers' compensation. Customers made payment to your firm at prices that you established. Neither party indicated an investment by the worker in your firm or a related business. Other than replacing any garments that she may have damaged, the worker did not risk incurring a financial loss beyond the normal loss of compensation.

You stated that the worker provided similar services for others during the same time period. There is no evidence presented that the worker advertised her services or maintained a business listing. She performed her services under your firm's name. You stated that the work relationship ended when the contract ended.

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## Analysis

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Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, your 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you relied upon the worker's prior training and experience to perform her services. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. You must have retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction with her services. The worker was required to perform her services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retained 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, did 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She performed her services under your firm's name. The worker was not engaged in an independent enterprise, but rather the laundry services performed by the worker were a necessary and integral part of your firm's business of providing laundry and cleaning services. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although you stated that you did not provide benefits to the worker, the work relationship terminated with neither party incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

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