

# SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.121 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 cleaning service business. The firm engaged the worker through a referral to perform cleaning services on a flexible variable part-time basis for the firm's business customers. The firm provided the worker with job instructions according to the firm's customers' requests. The firm assigned the worker schedules to work and jobs to perform based on the firm's business needs and the worker's availability. The firm, customers, and worker determined the methods used to perform the services. The worker provided the firm with job reports. The worker's routines varied based on job assignments. The worker performed the services personally at the firm's customers' job sites. The firm provided substitutes or helpers if needed and paid them.

The equipment, materials, and supplies were provided by the firm and firm's customers. 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 carried workers' compensation insurance. The firm determined the level of payment for the services paid by the customers and agreed too by the worker. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's customers.

There was a signed work agreement provided between the firm and worker indicating worker to be casual labor working schedules offered and agreed at a specific hourly rate. The worker agreed to be responsible for vehicle insurance coverage. The firm would be issuing a Form 1099 and worker would be responsible for own taxes on the income. The firm did not know if the worker performed similar services for others and the worker stated no similar services were performed for others while performing services for the firm's business. The worker did no advertising as a business to the public. The firm referred to the worker as a laborer under the firm's business name to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. thout incurring a liability. It appears the relationship is still on going.

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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. The firm engaged the worker on a flexible variable scheduled basis to perform cleaning services for the firm's business operation. The firm offered the worker jobs as available to perform and assigned work schedules. The firm provided the worker with the necessary instructions needed to perform the services according to the firm's customers' requests. The firm, customers, and 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 provide the firm with verbal job reports. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's customers' job sites. The firm provided substitutes or helpers as needed and paid them. 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 on-going significant 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 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. The firm and firm's customers provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The firm paid the worker an hourly wage and the customers paid the firm for the services. The firm carried workers' compensation insurance. The firm determined the level of payment for the services performed for the customers. 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 profits made nor the risk of losses being incurred 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 was a signed work agreement between the firm and the worker regarding the worker's and firm's responsibilities. The agreement indicated the firm would be issuing a Form 1099 for the payment for services and worker would be responsible for taxes on the income. 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 worker did not perform similar services for others while performing services for the firm's business. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's customers' job locations under the firm's business name on a regular 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 for termination. 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.