

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

Occupation 03PMW.134 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 worker initiated the request for a determination of his work status as a laborer; in this capacity he was responsible for plant maintenance and growing, delivering items sold, and loading materials for customers in tax years 2014 and 2015. The firm's business is described as a feed store, general hardware, paint and landscape supplies, restaurant food and supplies.

The firm's response was signed by the owner. The firm's business is described as farm/feed store/nursery. The worker performed services as home maintenance, cutting grass, and building a chicken coop.

The parties to this case acknowledged that they have been acquainted for over 30 years. The firm and worker stated that the other needed help.

The worker indicated he was given specific training/instructions and job assignments for loading items to be delivered to customers, plants to maintain, plants to stock, and how to stock shelves with feed and fish chum by the firm. The firm determined the methods by which the worker's services were performed and any problems or complaints encountered or questions that came up were directed to the firm. The daily routine consisted of reporting 7:30 am to 5:00 pm six days per week and consisted of watering plants, checking delivery schedule, delivering items sold, maintenance on the property, and stocking shelves. The services were rendered on site at the store 80% of the time and 20% making deliveries to customers. He indicated he was required to perform the services personally.

The firm indicated the worker was not given training or instructions. He stated the worker was a handyman and it was the worker who determined the methods to be used to perform the tasks. The worker did not have a schedule. The worker was not required to perform the services personally.

The worker indicated the firm provided delivery truck and all landscaping tools. The worker furnished nothing, did not lease equipment, and did not incur expenses in the performance of the job. The firm responded that the gas for mowers and paint were furnished to the worker; but, the worker furnished tools. Both parties acknowledged the firm paid the worker an hourly wage; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm and worker concurred the worker was not at risk for a financial loss in this work relationship. They did not agree as to which party established the level of payment for services provided or products sold.

The firm and worker responded that no benefits were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker stated that he was not performing same or similar services for others during the same time frame. He stated he obtained his handyman license two months before the work relationship ceased. The firm indicated the worker was handing out business cards.

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## Analysis

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A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

Based on the above analysis, we conclude that the firm 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.