

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

Occupation 03PMW.136 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 operating an auto repair, paint, and body shop. The firm engaged the worker verbally to perform auto body technician services for the firm's business. The firm provided the worker with job instructions and assigned the worker jobs to perform each morning. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm for resolution of any problems or complaints. The firm required the worker to provide the firm with detailed work reports on time and services performed. The firm stated the worker performed services at the firm's customers locations and the worker indicated at the firm's place of business. The worker performed the services personally and the firm indicated this was not required by the firm. The firm hired and paid substitutes or helpers if needed.

The firm provided the jobs, materials, and equipment needed to perform the services. The worker provided personal tools. The worker did not lease equipment or space. The worker did not incur any business expenses and no expenses were reimbursed by the firm. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and the worker notified the firm when time requirements were above firm's projected time for the projects. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The worker did not perform similar services for others while performing the services for the firm and was not prohibited from doing so by the firm. The worker did no advertising as a business to the public. The firm referred to the worker as a contractor under the firm's business name. Both the firm and the worker retained the right to terminate the working relationship 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 to perform services for the firm's business verbally, assigned the worker services to perform, and provided the worker with the necessary instructions on what and how to perform services according to agreements with the firm's customers and customer resources. The firm and the worker determined the methods to use 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 for resolution of any problems or complaints. The firm required the worker to provide the firm with detailed job reports. The firm hired and paid substitutes or helpers if needed. 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 firm provided the place of business, jobs, equipment, materials, and supplies needed by the worker to perform the services for the firm's customers. The worker provided personal tools. 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 customers paid the firm. The firm determined the level of payment made by the customers and customer's resources for the materials and services and agreed to the hourly wage payment made to the worker. 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 were no contracts between the firm and the worker. The worker signed a Form W-9 providing his Social Security Number at the beginning of the working relationship. The Form W-9 does not make the worker to be an independent contractor for federal employment tax purposes. 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 written or verbal. The worker did not perform similar services for others while performing services for the firm's business. The firm did not prohibit the worker from doing 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. The worker performed services personally on a flexible schedule as needed and available basis at the firm's place of business or other designated locations under the firm's business name for the firm's business customers over a period of about 1 year.

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.