

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

Occupation

03PMW.139 RepairMaintenanceWkr

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a window tinting business. The firm engaged the worker to tint car windows for the firm's business operation. The firm indicated not applicable to training or instructions being provided to the worker and the worker indicated receiving training on paint protection film from the firm. The firm assigned the worker jobs to perform based on firm's customers requests. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm did not require the worker to provide any work reports. The firm required the worker to perform the services personally at the firm's place of business. The firm indicated not applicable to hiring and paying substitutes or helpers and the worker indicated the firm hired and paid any if needed.

The firm provided the place of business and materials needed to perform the services. The worker provided personal tools. The worker did not lease equipment or space. The worker incurred expenses for personal tools and transportation. The firm did not reimburse any expenses. The firm paid the worker on a commission basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products and services. The firm indicated the worker's economic loss and financial risk were related to vehicle damages and the worker indicated not having any financial risk or to incur any economic loss.

There were no contracts between the firm and the worker provided. The firm indicated that window tinters are paid on a commission basis for this type of seasonal work. The firm provided no benefits. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker started no similar services were performed for others while performing services for the firm. The firm stated the worker advertised as a business on Craig's list and the worker indicated not advertising to the public as a business. Both parties 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 worker was engaged by the firm to perform services of installing window tint on cars based on business needs and customers requests. The firm assigned the worker services to perform and schedules to work. The firm was required to be contacted regarding resolution to any problems or complaints. The firm 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 perform the services personally at the firm's place of business. Substitutes or helpers would be provided and paid by the firm if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the place of business and materials needed to perform the tinting services. The worker provided personal tools. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a commission basis and the customers paid the firm for the products and services. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products and services. The firm indicated the worker's economic loss and financial risks were related to vehicle damages. There was no legal documentation provided to support this to be a legal liability the worker was responsible for in performance of the services. The worker could not suffer any economic loss due to significant on-going business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to performance of the services for the firm's business operation. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. 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 firm indicated there was a commission seasonal working relationship agreement. 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 firm indicated the worker did perform similar services for others and was not required to obtain the firm's approval to do 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 personally performed services for the firm's business at the firm's place of business under the firm's business name on a regular and continuous as needed basis over several months.

Both the firm or 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.