

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

Occupation 03PMW.143 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 in the business of providing on-the-road repair services for trucks and trailers. The worker was engaged as a mechanic to provide the on site repair services as well as maintain and stock the firm's service truck with supplies and clean the firm's garage. He received a 2014 Form 1099-MISC for his services. There was no written agreement.

Both the firm and the worker agreed that the firm provided no training or instructions as the worker was an experienced mechanic. Both also agreed that the worker received his task assignments via phone calls from the firm. However, the firm added that the worker generated his own work as well, likely referring to the fact that the worker paid a fee to others to hand out the firm's business cards. He was partially reimbursed by the firm for this activity. Each party indicated that the other determined the methods by which the assignments were performed but agreed that the firm would be contacted if any issues or problems arose. The worker submitted all information on the truck being repaired as well as parts' receipts or billing forms. The firm noted that there were no reports. The worker's work routine included going to the firm's premises on a daily basis. The firm indicated that the worker made his own schedule as he was not obligated to go out to any job and kept the service truck at his residence. Most of the worker's time was spent at the customers' locations. There were once a week safety meetings. Both parties agreed that the worker was required to provide the services personally; the worker noted that only the firm hired/paid any substitute workers.

The firm provided the service truck, all major hand tools, tire equipment, all parts/supplies, and all office paperwork; the firm however noted it provided only the truck and parts. The worker supplied minor hand tools and fuel for the truck. The worker incurred expenses for eating out, fuel for operating on-board equipment and service truck. He was reimbursed by the firm for any parts he had paid for with cash. The worker was paid an hourly rate plus commission and had no other economic risk; the firm, however, noted that he was paid commission only and had the risk of loss/damage to tools, equipment, as well as advertising costs. The customer paid the firm though the firm noted that sometimes the worker was paid dependent on whether the trucking customer had an account. Each party indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker's mechanic services were provided under the firm's name. The relationship ended when the worker quit.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm engaged the worker as a skilled mechanic, and provided him with a mobile service truck. The firm obtained jobs by advertising its services whether through business card distribution, via its website or other forms of advertising. While the worker utilized referrals to generate additional business, this benefited the firm as well. The worker had no set scheduled hours as his work hours were dependent on the repair jobs. The worker also indicated that he reported into the firm's location daily, reasonable as there was billing to submit, and parts inventory to replenish. The worker kept the firm's service truck at his residence, making it unreasonable to assume that he would be allowed to regularly turn down the firm's work assignments. The worker accounted for the services he provided by reporting to the firm in order to calculate his pay as well as bill the customer for his services. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The firm would need to know information regarding the work done, parts needed, and time involved in order to bill the customer. While the work relationship was for a short duration of time, the worker provided his services on a continuous basis during the time period involved. 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. This would be reasonable and understandable as the worker was allowed to park the firm's service vehicle at his residence. Another element supporting an employer-employee relationship was the fact that the worker was to provide the 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.

Factors that illustrate whether there is 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. There was some disagreement on whether the worker received an hourly rate of pay and/or commission. While an hourly rate of pay can be an indication of an employer-employee relationship, "profit or loss" implies the use of capital by a person in an independent business of his or her own. It was the firm that had the investment in the service vehicle. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. While a written agreement alone would not determine the work relationship, it would have provided information regarding the work relationship and the intent of the parties. In this case, the worker provided mechanic services for the firm's mobile truck repair business. When doing so, the worker was not engaged in an independent business venture as his ability to provide mobile repair services were dependent on the firm providing the service truck. His services were essential and integral to the firm's continuing operations. 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.