

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

Occupation 03PMW.150 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 carpet, tile, and upholstery cleaning services. The worker provided the labor to operate the firm's truck-mounted cleaning equipment. She received a Form 1099-MISC for her services in 2014 through 2016. There was no written agreement.

The worker was an experienced carpet cleaner, though she indicated that she still received some initial training/instructions on how the firm performed services as well as the chemicals used. The firm provided the worker with cleaning jobs when she called in; then she reported to work for the route assigned. Each party indicated that the other determined the methods by which the task assignments were performed. Both parties agreed that the firm would be contacted if any problems or issues arose. There were no written report requirements; however, the worker noted that she would call into the office at the completion of each job. The firm indicated that the worker had a varied work schedule dependent on the jobs themselves. The worker's routine consisted of jobs all scheduled by the firm with dates, times, locations, and what needed to be done. Both parties agreed that all work was performed at the customer's location. No required meetings other than the assignment of jobs in the mornings. Both also agreed that she was to provide the services personally; the firm hired and paid any substitutes or helpers.

Both the firm and the worker agreed that the firm provided the truck and cleaning supplies; the worker also added that the firm provided the equipment, gas for the truck, a helper (paid by the firm) and a uniform as well. Both parties agreed that the worker was paid commission and had no other economic risk. Both also agreed that the customers paid the firm. The worker indicated that the firm set prices before the jobs although she sometimes used the firm's price list for quoting extra work. The firm noted that the worker had some discretion as far as prices 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 firm disagreed. After every job, the worker would give out the firm's business card. The firm noted she had no responsibilities in obtaining new customers. It was the firm that set-up/scheduled all work. 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 provided the worker with instructions, even if just initially. It was the firm that obtained the cleaning jobs. The firm scheduled the work, designating a date, time, location and what needed to be done. If available, the worker performed her services according to the firm's scheduled jobs adhering to the appointments with its customers. 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. In addition, the worker provided her services on a continuous basis throughout 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.

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. It was the firm that had the investment in the vehicle, equipment and incurred all operational expenses as well. The worker had no investment. She was paid on a commission basis; however, the opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss when there is no significant investment.

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. The worker provided the labor to operate the firm's truck-mounted cleaning equipment. When doing so, the worker was not engaged in an independent business venture. Instead, her services were essential and integral to the firm's business 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.