

# SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.154 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 a cleaning service business. The firm engaged the worker to perform cleaning services for the firm's business customers. The worker received training from a prior worker the worker was replacing. The firm provided the worker with verbal and written job instructions on assignments. The firm and worker determined the methods used to perform the services. The worker contacted the firm or firm designated individuals regarding problems or complaints for resolution. The firm required the worker to provide reports on broken or damaged items. The worker performed the services at the firm's customers locations during designated work hours determined between the firm and firm's customers. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers directly or indirectly with prior approval being granted to the worker.

The firm provided the jobs, equipment, materials, and supplies. The worker did not lease anything or incur any business expenses. 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. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation.

There were no contracts between the firm and worker. The worker did not perform similar services for others while performing services for the firm per the worker and the firm indicated she did and also performed a different type of work as well. The worker advertised the availability for performing jobs through social media. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The relationship ended when the worker was injured and unable to work.

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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 obtained jobs from customers and offered the worker jobs to perform. The firm allowed the worker the flexibility to accept or decline jobs. Once the worker agreed to perform jobs the firm provided the worker with the necessary training and instructions in order to perform the services according to the firm's agreements with the customers. The assignments were given verbally and in writing by the firm. The worker and firm 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 worker was required to contact the firm or other firm designated individuals regarding resolution to problems or complaints. The worker was required to perform the services personally at the firm's customers job sites. The firm hired and paid substitutes or helpers directly or indirectly through a prior approval process. 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 worker advertised as a business owner and sales consultant. The worker did not incur any business expenses in this working relationship. The firm provided everything the worker needed in order to perform the services. The firm paid the worker an hourly wage under her name and social security number and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made and had no financial risk. 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 stated the worker did perform similar services for others and was not required to obtain the firm's prior 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 advertised herself as being available for jobs on social media.

Both the firm and 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.