

## SS-8 Determination—Determination for Public Inspection

Occupation

Construction/Technical Services/Trades

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is a window and door installation business. The worker was engaged to perform services as a service technician, to assist with installation and repairs. The worker submitted an employment application to the firm. The firm treated the worker status as independent contractor, issuing to the worker Forms 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The parties agree that the firm received on the job training and instructions on how to perform his services. The firm provided the work assignments, determined the work methods by which to perform the services, and resolved work related issues. The firm required the worker to perform his services personally, at its business location and at customer locations.

The parties agree that the firm provided all equipment, tools, and supplies needed to perform the services. The worker did not incur work related expenses. The firm paid the worker on an hourly wage basis. Customers paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The parties agree that the worker did not perform similar services for others while engaged by the firm. The worker did not advertise his services to the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

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## Analysis

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm, using the firm's equipment, tools, and supplies. The worker's services were performed in the name of the firm, for its customers. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)