

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

Occupation 03TRA Construction/Tradesperson	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

**For IRS Use Only:**

**Facts of Case**

The firm is a corporation in the business of installing and repairing gutters on residential and commercial buildings. The firm engaged the worker as an installer/laborer. The relationship began in 2014 and ended in November 2016. Both parties entered into a signed agreement in mid October of 2016.

The worker stated he received on the job training. The firm stated the worker received job sheets with outline and footages for the project. The worker stated he received his assignments from the general manager, [REDACTED] and he determined how those services should be performed. The firm stated the worker determined how to perform his services. The worker ultimately relied upon the firm to resolve his problems and complaints. The worker stated he was required to submit time sheets, sent pictures from his phone with comments about the job. The firm stated the worker was required to submit job sheets. The worker stated the firm determined his daily schedule and the firm stated the worker's schedule varied. The worker performed his services mainly on the job site. The worker was required to attend random meetings. The worker stated he was required to perform his services personally and the firm stated the worker was not required to perform his services personally.

The worker stated he wore a t-shirt with the firm's logo and name, the firm provided transportation, materials, tools and equipment he needed to perform his services. The firm stated they provided the gutter forming machine and transportation of the machine. At the beginning of the work relationship the worker was paid by the hour but after signing the agreement the worker was then paid according to the job. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated he performed similar services for others. The worker stated he performed services under the firm's name [REDACTED]. The firm stated the worker was their representative. The firm stated the worker quit. The worker stated he ended the relationship after he was made to sign the agreement prepared by the firm.

The worker provided out office with an interoffice memo telling the worker to check the fuel before leaving and where to get fuel if he needs some. There was another Interoffice memo stating any time the worker uses a credit card or Lowes card to get a PO. Instructed the worker to walk the job site to ensure he has cleaned up all scrap, extra material and have all the tools.

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**Analysis**

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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.

Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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. In the instant case, the worker was given instructions by his general manager on what services to perform.

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. In the instant case, the worker was required to perform his services under the firm's business name.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. In the instant case, the firm did pay for all work related expenses the worker incurred.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. 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. In the instant case, the worker did not have a significant investment in the performance of his services.

The worker was an employee according to common law. The worker received his assignments from the firm and the firm determined how those assignments should have been performed. The worker had a general manager he was required to take directions from which demonstrated an employer-employee relationship existed. The firm had the financial investment as the firm made an agreement with their customers for the job, provided the worker with a truck, incurred operating expenses to keep that truck on the road and provided the worker with the materials and tools the worker needed to perform his services. The worker was required to wear a company uniform and perform his services under the firm's business name. This demonstrated the worker's services were integrated into the firm's daily operations in an employer-employee work relationship.

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 go to [www.irs.gov](http://www.irs.gov) for further information.