

## SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Laborer	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a general construction business and the worker was engaged from June 2015 to September 2015 as a helper. The worker's tasks included sweeping, picking up trash and general clean-up on the firm's job site to get the job finished. The firm believes the worker was an independent contractor while performing services for them because he worked on a part-time and short-term basis. The firm reported the worker's earnings on a Form 1099-MISC.

The firm provided no training to the worker as his services was to sweep and pick up trash. The firm provided the worker with his assignments and the worker was required to notify the firm if any problems arose. The worker was not required to submit reports to the firm. The firm states the worker performed his services Monday through Friday from 8 a.m. to 4 p.m. at their client location. The firm states the worker attended safety meetings.

The firm states they provided all supplies, equipment, and materials to the worker in order to perform his services. The worker did not incur expenses, he was paid at an hourly rate which the firm states they established, and he did not have an opportunity to incur a loss as a result of his services.

The worker was not eligible for employee benefits. The worker did not perform similar services for others, he did not advertise his services and either party could terminate the work relationship at any time without either party incurring a liability. The relationship ended when the job was completed.

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## Analysis

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As in this case and 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. Although the worker was afforded with some freedom of action while performing his services, this is not uncommon based on the nature of the services performed. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on a part-time, short-term basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

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. "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. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.