

# SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	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

Information provided indicated the firm is a lead abatement company. The firm has requested the work classification determination. The worker performed services in 2018 and 2019 as a licensed lead abatement contractor. The firm indicated it requires the workers to have their own tools and transportation to various job sites. The firm indicated the workers can choose which projects they want to complete and which they are not interested in. The firm indicated the overseeing agency that pays out the grant money schedules the timing for the occupants of the home to be placed in a motel. The firm must have the work completed in that time frame. The State Dept. of Health and EPA determines how the work is to be performed. The worker submits a work completion and timing reports to the firm for billing. The firm indicated the workers set their own hours and days within the time frame for the work scheduled. They may come to the job sight as early or as late as they wish. The daily/weekly routine varies depending on what other projects they are working on. All work is performed at the customer location. A preconstruction walk through is at times preferred if possible, before construction begins. The worker is required to perform services personally. The firm indicated all materials are on the job sight. The firm indicated the firm and worker may agree on extra cost involved in far away projects before contracting or bidding jobs. The firm indicated the worker is paid by either a flat fee, by the hour, on a piece work basis or by a lump sum. The firm indicated the customer paid the firm. The worker is not reimbursed for any losses. No benefits were provided. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker has been in business for many ears and is known as such. He is represented as a Lead Abatement Contractor. The job either completed or the worker no longer wanted to work.

The worker stated he feels he is an employee due to the fact the firm controls the work accomplished and directs how it is done. He indicated he is supplied with tools and equipment. He was trained and attended a forty hour class, after which he received his license as a certified Lead Abatement Contractor. He indicated he was directed by phone or text message as to the address of work sites. The Foreman or owner directs the job assignments and tasks at job sites. He contacts the firm with problems or issues. Daily time cards are logged and recorded electronically. He indicated he typically works from eight a.m. with a quitting time of four-thirty, Monday through Friday. He agreed all work is at the customer locations. He agreed there is a preliminary walk through on the job site. He indicated non-attendance would result in a pay deduction. He is required to perform his services personally. The worker indicated the firm supplies all material, equipment and major tools to complete projects. He indicated he purchased his own hand tools. He indicated he was paid by the hour and given a gas allowance for jobs greater than 50 miles from home. He agreed the customer paid the firm. He indicated the firm determined the level of payment charged for services. He indicated some workers were required to sign a non-complete clause, he personally was not. He is represented as an employee of the firm. He indicated he quit.

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## Analysis

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The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, 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.

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.

The term “full-time” may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work.

## CONCLUSION

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. The fact the worker is a licensed certified lead technician does not indicate he owns and operates his own business. (Many occupations require a specialized license, plumbers, RNs, Cosmetologists, electricians, etc.) No evidence had been provided to prove the worker owned and operated his own business. All work was performed under the firm's business name. The firm obtained the grant money, obtained the work orders. It is then the firm's responsibility to ensure the work is performed in the required time frame. The fact the worker provided his own transportation, and hand tools, also does not make him an independent contractor. Tools of the trade does not indicated a significant financial business investment. The worker indicated he did in fact submit a daily time card, and worked a set daily work schedule. The worker indicated he performed services Monday through Friday, eight to four-thirty indicating a full time work relationship. The firm indicated the worker had the freedom to choose the work assignment, and was free to come and go. However, the firm retained the right to direct the time frame worked, in order to ensure his mandatory time frames were met.