

# SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.165 Tradesperson	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 in the business of property management. The worker was engaged by the firm to perform maintenance and related services. The firm did not withhold taxes from the worker's remuneration for 2009 through 2014.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The firm provided the worker with his work assignments. The worker resolved most problems, but he contacted the construction supervisor, if necessary. The worker submitted weekly timesheets. The firm asked the worker that work be completed during regular business hours and per city work hours allowed at each property. The worker attended safety meetings on-site under a general contractor. The worker performed his services on the firm's properties. He was required to perform his services personally. The firm stated that if the worker hired substitutes or helpers, approval by the property or project manager was required. The worker would have been responsible for their compensation, with reimbursement by the firm if it exceeded the scope as originally contracted.

The firm provided the heavy equipment (tractors, forklifts, etc.). The worker provided his own hand tools. The firm reimbursed the worker for repair materials. The firm typically paid the worker at an hourly rate. It covered him under workers' compensation. Customers paid the firm directly at prices established by the firm. The worker's risk of loss involved the loss of tools and equipment. Neither party indicated an investment by the worker in the firm or a related business.

The firm did not make benefits available to the worker. The firm stated that the worker provided similar services for others during the same time period. There is no evidence presented that the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the firm terminated the work relationship.

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## Analysis

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Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm relied upon the worker's prior training to perform his services. 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. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The firm was ultimately responsible for resolving any problems that may have occurred, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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 bid on jobs, 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 worker furnished his personal tools. 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. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker was not engaged in an independent enterprise, but rather the maintenance and related services performed by the worker were a necessary and integral part of the firm's property management business. 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 worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

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.