

## SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.169 Tradesperson

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is a construction business. The firm engaged the worker to perform repair/maintenance services for the firm's business operation on a part-time basis between the worker's other jobs. The firm provided job instructions on work orders and assigned jobs to the worker to perform for the firm's customers. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm's designated customer or the firm regarding any problems or complaints for resolution. The worker performed services at the firm's customers locations. The firm required the worker to perform the services personally. If the worker brought in a helper the firm paid them. The firm did not require the worker to obtain the firm's approval to do so.

The firm provided equipment, materials, and supplies needed by the worker to perform the assigned services. The worker provided personal equipment. The worker did not lease equipment or space. The firm indicated the worker incurred some supply expenses and the worker indicated no expenses were incurred. The firm did not reimburse any expenses. The firm paid the worker a daily salary and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. There were signed confidentiality, disclosure, lien waiver, and criminal background records authorizations signed by the worker between the firm and firm's customer indicating the worker to be an independent contractor and the firm owner to be a supervisor. The worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker did no advertising to the public as being engaged in a business. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker part-time between the worker's other jobs to perform services for the firm's business. The firm provided the worker with instructions on work orders. The firm assigned the worker jobs when the worker was available. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm's designated customer or the firm regarding resolution to any problems or complaints. The worker performed the services at the firm's customers job sites. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal tools of the trade. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker a salary per day and the customers paid the firm. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss due to on going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services the worker performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There were signed documents provided that indicated the worker was an independent contractor and the firm owner was a supervisor. The worker did have other jobs while performing services part-time for the firm's business and was not required to obtain the firm's approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's customers job sites under the firm's business name over a period of several years on a part-time basis.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.