

# SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.176 Laborer/Trades	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 a licensed contractor providing HVAC service and installation. The firm states the worker in this case was engaged as a subcontractor, to provide site cleanup, roofing, and electrical services. The firm indicated that the worker performed the services under his business name of [REDACTED]. As a result, the firm issued a Form 1099-MISC at year-end under the worker's name [REDACTED], to report the monies received for his services as non-employee compensation.

The firm did not provide specific instructions or training to the worker on how to perform the services. Work assignments were offered to the worker, of which he could accept or decline. For work he accepted, the worker set his own schedule and routine, and rode with the firm to the job sites. The worker performed his services personally, at the firm's customer locations. Work methods were determined mostly by the worker. Work related issues were reported to the firm, as the main contractor, for resolution purposes.

The firm states it provided some of the tools and equipment needed to perform the services as it was easier for the worker. There was no information provided to evidence that the worker provided any items needed to perform the services. Customers made payment to the firm for services rendered. The firm indicated that the worker was paid on an hourly rate basis, as that is what the worker charged the firm; the firm did not provide copies of bills or invoices presented by the worker for payment purposes. There was no information provided to support economic loss or financial risk incurred by the worker.

The firm did not carry workers' compensation insurance on the worker. There was no information provided to support that employment benefits were made available to the worker. The worker did not perform similar services for others. Advertising was done via the phone book, company van, online advertising, etc. The work relationship was continuous, and could have have been terminated by either party at any time without incurring liabilities.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. Problems and complaints were resolved by the firm. The worker used the firm's equipment, tools, and supplies, and services were performed for the firm's customers. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)