

**SS-8 Determination—Determination for Public Inspection**

Occupation 03TRA.190 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 general contractor, in business to provide construction updates and remodels for its client's store locations in multiple states. The worker was engaged to perform carpentry services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The firm's owner provided the plans, a list of stores to be remodeled, and the time frames requested by the client. The firm provided updates to the assignments as needed. The worker was expected to follow basic construction work methods that had been established by the firm, to update and remodel all stores. The worker was the supervisor on the jobs, and was to ensure that the other workers were following these methods on daily projects. Work related problems were resolved by the firm's owner, and by the client. The worker was required to provide daily work updates. The worker was required to perform his services personally, at the firm's premises, and at the job sites.

The firm provided the major equipment and tools needed to perform the services. The firm provided the worker with a company truck and trailer to use in the performance of his services. The firm also provided the worker with a company credit card for the purchase of supplies and fuel needed in the performance of his services. The worker provided his own hand tools, and the client provided the necessary materials. The worker incurred expenses for use of his own hand tools. The worker was paid on an hourly wage basis for his services. The client paid the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risk related to the services he performed for the firm.

The firm carried worker's compensation insurance on the worker. Bonuses were given for jobs completed ahead of schedule, and year-end bonuses were given for the amount of jobs completed on time. There was no information provided to support that the worker performed similar services for others, or that he advertised his services to others while engaged by the firm. There was no information provided to support that either party would have incurred liabilities in terminating the work relationship.

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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 instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location, and at locations designated by the firm. The worker used the firm's facilities, equipment, tools, and supplies, and he represented the firm's business operations in the performance of his services. 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.

Additional information provided for this case indicates the worker's employment ended in March of 2017, when the worker turned in equipment and supplies to a representative of the firm, and left a company computer and keys in the firm's truck and trailer.

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)