

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

Occupation 04FSC Foremen/Superintendents/Crew or Peer Leaders	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**

The firm is a construction management business, performing construction project services for municipalities. The worker was engaged to perform services as a concrete foreman. In this capacity, the worker directed a 7-person crew for the firm, prepared the dirt work, placement of rebar, welding, form placement, and concrete placement. The firm considered the worker to have performed his services as an independent contractor, and issued to him a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker had experience in this type of work before his work relationship began with the firm. The firm provided project construction plans to the worker. The worker discussed with the firm's owner the work methods to be used, what workers to assign to a job, and the time frames of the projects. The worker was required to report problems and complaints to the firm; the worker was responsible for problem resolution. The firm required the worker to perform his services personally at the firm's job sites. Helpers were engaged by the firm, and by the worker with the firm's approval. Helpers were paid by the firm for their services.

The firm provided payment for the materials needed to perform the services, and the worker provided his own tools, and personal safety equipment. The firm provided for expense reimbursement for any additional materials needed that were not on the job site. The worker's remuneration was hourly waged based, and paid to him by the firm, in a lump sum. Customers paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm. The worker was not covered under workers' compensation insurance.

The firm did not make employment benefits (paid vacations, sick pay, holiday pay, personal days, bonuses, pensions, insurance benefits) available to the worker. There was no information provided in this case to support that the worker performed similar services for others while engaged by the firm, or that he advertised his services personally to others. The work relationship was continuous between the firm and worker, and could 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 instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools, and supplies and represented the firm's business operations in the performance of his/her 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.

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)