

# SS-8 Determination—Determination for Public Inspection

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| Occupation<br>04FSC Lead Agent | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                           | Third Party Communication:<br><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 worker requested a determination of employment status for services performed for the firm in 2017 as a window washer. The firm is a window cleaning business and responded to our request for information as follows:

The firm is in the residential and commercial window washing business. The firm stated that the worker was engaged as a subcontractor. He washed windows, pressure washed concrete, cleaned gutters, light fixtures, fans and dusted blinds. The worker also performed bids for new customers. He was paid 70% of the profits from the firm's customers that the worker services. The worker owns a business called Pre Window Cleaning. The worker agreed to be a contractor for the firm. He drove his own vehicle to and from jobs sites. He was free to quit any time which he did with a day's notice. There was no written agreement. The worker entered into a verbal agreement to service the firm's customers for 70% of the profit with no benefits. As part of the agreement the worker was also given use of one of the firm's trailers containing a filtration system and a pressure washer.

No formal instruction or training was given. The firm gave the worker his assignments by text the night before. He would notify the worker of the time to be at the customer homes or businesses and what services needed to be performed. The worker used his own discretion in how the work was completed. The worker was not required to prepare any reports. The worker generally followed a schedule set by the firm and customer appointers. The worker did have some flexibility and notified the firm if he was unable to work a certain day in the week. The worker personally performed his services at the firm's customer locations. If the worker used helpers he was responsible for paying them. The firm provided the trailer, filtration system and pressure washer as provided in the agreement. The worker provided his own hand tools. The worker paid for the cost of gas, propane and equipment repairs if needed. Customers paid the firm. The worker also performed estimates for services while on job sites. Either party could have terminated without liability. The worker quit.

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## Analysis

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As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below. Therefore, a statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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 worker received his assignments from the firm and reported to the firm when problems occurred. You gave the worker his assignments the night before and instructed him what time to be at each assignment and what he was supposed to do.

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 was performing his services, representing your business, to your customers.

Factors that illustrate whether there is 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 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. You provided the trailer that had the firm's name advertised on it and the larger equipment to perform the services.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker had no investment in the firm's business, he was paid a percentage of the job and could not suffer a loss.

Although you state the worker was performing these services as a representative of his own firm, there is no evidence of that. While the worker was performing services for your company he was performing the services under your company name, not his own. When the worker was getting bids for jobs at customer sites it was for your business and not his own. It is unreasonable to assume that the services the worker performed for your customers was done under his own business name.

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.

Firm: For further information please go to [www.irs.gov](http://www.irs.gov) Publication 4341