

# SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.9 Overseer	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

According to the information and documentation submitted, the firm's business is a general contractor. The firm performs roofing, siding, guttering, windows, concrete, framing, exterior and interior remodeling, landscaping, tree removal, etc. The worker performed her services pursuant to an "Independent Contractor – General Manager Agreement/Contract" which designates that the worker is to provide services as a General Manager. The firm reported her earnings on Form 1099-MISC at year end.

The agreement provides a detailed description of the worker's services, which include sales and supervision of projects and the day to day operations of the office. The agreement provides that the worker's pay is based on a 5 day work week of 8 hours per day at an hourly rate. The agreement also provides that the worker, if the worker performs any work at home, she needs the firm's approval and she must complete a task report to report the hours worked. The agreement also provides that the worker may earn commissions and provides how the bonus is calculated. In addition, the agreement provides that the compensation paid to the worker will not include withholding taxes, insurance, social security, etc. and the worker will receive a Form 1099. The work relationship ended when the worker received a termination letter from the firm.

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**Analysis**

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According to the information and documentation submitted concerning the work relationship, the firm provided the worker with training. The firm provided the worker with her assignments. The worker personally performed her services at the firm's premises according to an established work schedule.

The firm provided all necessary equipment and supplies for the worker to perform her services. The firm paid the worker an hourly wage for her services and provided the opportunity to earn bonuses. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.