

# SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.11 Manager	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 in the business of the manufacture and sale of antennas and unmanned aerial vehicles. The worker provided his services to the firm as a sales and operations manager in 2012 supervising antenna and UAV manufacturing, purchased supplies, analyzed sales and manufacturing data, scheduled manufacturing, developed product improvements, managed customer and employee relations, implemented marketing strategies, identified and obtained new customers, and received the Form 1099-MISC for these services.

The worker stated that the firm trained the worker to do all the tasks the job required; specifically the identification of defects for quality control. The firm stated that the worker was given some description of the firm's product and its use. The worker received his assignments verbally from the firm's owner and the firm's owner along with the worker determined the methods by which the assignments were performed; the firm's owner having absolute authority. The firm maintains that the worker was only given assignments when services for shipping and design were required, and the worker determined the methods by which the assignments were performed. Both parties agree that if problems or complaints arose the worker was required to contact the firm's owner and the owner was responsible for problem resolution. The worker indicated that the firm required the worker to submit written and oral progress reports, and business status reports on a daily or weekly basis. The firm contends that no reports were required. The worker's schedule varied; he performed the tasks requested by the owner. He explained that he was required to attend online sales meetings with the firms' customers. The worker provided his services personally on the firm's premises which was his residence as well as the firm's business address. If additional help was required, the firm hired and compensated the helpers. The firm expressed that the worker paid the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; office supplies, desk, office, protective equipment, packaging scales and equipment, and quality measurement tools. The firm indicated that they provided the worker with the shipping room. The worker supplied the computer, cell phone, and e-mail address. The worker did not lease any equipment and was reimbursed by the firm for any business expenses incurred in the performance of his services. Additionally, the worker submitted an itemized reimbursement request form with the firm's business name and the worker's name, dated 12/5/2012. The firm added that there was a verbal agreement with the worker living at the firm's business location. The worker received a salary for his services. The firm contends that they decided a pay amount each month. The firm's customers paid the firm for the services the worker provided. The worker stated that the firm established the level of payment for the services the worker provided. The firm articulated that there was a mutual agreement between the worker and the firm establishing the level of payment for the services the worker provided. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker. The worker did not perform similar services to others during the same time period. The worker performed his services under the firm's business name. The worker's responsibilities in soliciting new customers for the firm were to identify and contact the new customers, advise them on the products, process, packaging, and sales. The firm's owner along with the worker provided the leads for prospective customers for the firm. The worker was required to report any new leads and customers to the firm's owner. All orders were submitted to, and subject to approval by the firm. The worker did not pay for the privilege of serving the firms' customers on the route or in the territory. He sold the products at the firms' headquarters. The worker spent 15% of his time in the solicitation. The merchandise purchased by the firms' customers are for resale or use in their business operations. The products sold are antennas which are resold for use in unmanned aerial vehicles, radio controlled vehicles, wireless video and wireless internet. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the worker quit.

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## Analysis

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The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm trained the worker regarding the performance of his services. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. 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 facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. He received a salary for his services. 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 worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.