

# SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.31 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 business to create and sell software to the construction industry. The worker was engaged as the Director of Business Development and as a salesperson. The firm treated the worker as both an independent contractor and employee for the same services. Pay documents Forms 1099-MISC and W-2 were issued to the worker at year-end to report the monies received for his services as non-employee compensation and wages.

The firm's CEO provided the work assignments and ultimately determined the work methods by which to perform the services. The worker's services were performed at the firm's office location, and from his home office, with helpers engaged by the firm and paid by the firm. Problems and complaints were reported to the firm for resolution purposes. The worker was required to provide the firm with sales data reports.

The firm provided the worker with all items needed to perform his services (computer, firm's software, [REDACTED] Software, and [REDACTED] server). The worker incurred expenses for travel and his home office. The firm reimbursed for those expenses. The firm paid the worker on a salary plus commission basis for his services. The worker did not incur economic loss or financial risk with regard to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Paid vacation benefits were made available to him. The worker did not perform similar services for others, and did not advertise his services to the public. The work relationship was continuous as opposed to a one-time transaction.

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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 used the firm's facilities, equipment, tools, and supplies. He performed his services at the firm's location and at his home office, and 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.

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)