

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

Occupation 04MAN.35 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 tile and stone installation. The worker provided his services to the firm as a sales manager with services such as; developing relationships for new business for the firm, delivery supplies, installation and installation management, phone set up, and internet in 2013 and received the Form 1099-MISC for these services.

The worker stated that the firm provided the worker with [REDACTED] product training in [REDACTED] to do all the tasks the job required. The firm contends that there was no training. The worker received his assignments from the firm which included a mix of cold calls and contacts issued by the firm, and both the worker and the firm determined the methods by which the assignments were performed. The firm maintains that the workers' assignments were self-generated and the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and together they resolved the issues. The firm expressed that the worker was responsible for problem resolution. The firm required the worker to submit sales and sales contracts. The firm reported that no reports were required. The worker had a set schedule working Monday through Friday beginning his day at 8:00AM and finishing his day at 5:00PM. He provided his services personally on the firms' premises, the firms' customers' homes, retailers, and job sites. The firm expressed that the worker's schedule varied. The firm held occasional meetings to discuss company plans and current projects. If additional help was required, the firm hired and compensated the helpers. The firm indicated that if substitutes or helpers were needed, the worker hired them and the firm paid them.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; office, business cards, shirts, job materials, grout, durock, and caulk. The firm stated that the worker provided the truck, gas, tools, and insurance. The worker did not lease any equipment and was reimbursed for any business expenses incurred in the performance of his services for the firm. A copy of the signed contract stated that the worker was paid a salary of \$46,500.00 per year, payable at regular payroll periods, and was reimbursed for all business expenses after the employee presented an itemized account of expenditures. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship.

The worker submitted a written contract with a heading of "Employment Agreement" signed by both parties, which stated that the employee was entitled to a yearly vacation of one week at full pay in the first year. The worker did not perform similar services to others during the same time period. The written contract also described the terms and conditions of the relationship. Additionally, the worker submitted a business card and indicated his services being performed under the firm's name with the title of "sales manager". 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.

There was a written contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties. See also Section 31.3121(d)-1(a)(3) of the Employment Tax Regulation.

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. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. Although the worker may determine his own methods to complete his work assignments, we believe the firm retained the right to change his methods to protect their business interest. The worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered his services personally. 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. His pay was based on a salary. 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. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. 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.