

## SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.48 Manager

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in business to manufacture, design, and support servers and telecommunication equipment. The worker was engaged to perform services as a Community Manager, whose duties included shipping, production, customer support, and programming. The firm was located in one state, and the worker performed his services at a location in another state. The firm believes that due to logistics it was not able to direct and control how the services were performed, and therefore the worker performed the services in the capacity of an independent contractor. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report the monies he received for his services as non-employee compensation.

The worker had prior experience in this work, and did not need further training from the firm on how to perform the requested services. The worker's basic instructions were to perform the day to day operations including customer support, shipping, and development. Daily tasks were determined by need; as orders and issues came in, they were handled. Additional tasks were directed through meetings and e-mail. The firm's management and the worker both determined the work methods by which to perform the services, and both parties resolved problems and complaints. The firm monitored trouble tickets to ensure they were being taken cared of. The worker was required to perform his services personally. Helpers were engaged by the worker with the firm's approval. The worker paid the helpers, and the firm reimbursed the worker for the expense. In 2011, the worker's services were performed on site in the offices in [REDACTED] and [REDACTED]. In 2013, the firm's warehouse was relocated and the worker started telecommuting. The worker's hours for phone availability and e-mail remained the same throughout the work relationship. The worker was required to attend daily and weekly meetings, held as needed to address business concerns.

The firm provided the facilities, materials, computer, phone extension, and company e-mail address needed to perform the services. The worker provided his own laptop, and cell phone. The worker did not incur work related expenses. He was paid on a salary basis for his services, as established by the firm. The worker's economic loss or financial risk was with regard to loss or damage to his personal property (i.e. computer, phone).

Workers' compensation insurance was not carried on the worker. No employment benefits were made available to the worker. There was no information provided to evidence that the worker performed similar services for others, or that he advertised as being available to perform similar services for others while engaged by the firm. 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's services were performed personally, at locations designated by the firm. The worker used the firm's facilities, equipment, tools, and supplies 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)