

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

Occupation 04MAN.56 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 a title company. The worker was engaged to perform services as an office manager, and to assist with closing insurance policies. The firm issued to the worker a Form W-2 at year end to report the monies received for the office management services as wages. The firm also issued to the worker a Form 1099-MISC at year-end to report the monies received for the closing services as non-employee compensation.

The firm provided for the license test that was required to run the company. Assignments were received based on referrals from real estate agents; the worker was responsible for all assignments. The worker determined her own work methods to perform the services. The worker reported problems and complaints to the firm for resolution purposes. The worker was required to perform her services personally. Helpers were engaged by the firm, and paid by the firm for their services. The worker's services were performed primarily from the firm's office location, with some of the work performed from her residence. The worker was required to provided the firm with monthly spreadsheets.

The firm provided the office location, phone, and paper supplies needed to perform the services. The worker provided her own computer. The worker did not incur work related expenses. The firm paid the worker on a salary basis, plus commissions for her services, as established by the firm. The worker did not incur economic loss or financial risk with regard to the services she performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits (bonuses and paid holidays) were made available to the worker. The worker did not perform similar services for others. Advertising was paid 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 her services. The firm remained responsible for problem and complaint resolutions. The worker's services were performed personally, at the firm's location and from her residence. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her 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 her 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 she performed her 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)