

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

Occupation 03OPE Operators	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 grind services. The worker provided his services to the firm as a centerless grinder with services which included the finish grinding of machine parts in 2015 through 2016. He received the Form 1099-MISC and the Form W-2 in 2015 and the Form W-2 in 2016 for these services.

The firm's supervisor assigned the worker his assignments on a job by job basis which included operation sheets and blue prints, and the firm's supervisor determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm said that they required the worker to submit operation sheets. The worker maintains that he had a set schedule working the day shift forty hours each week, and overtime was as needed by the firm. The firm contends that the worker worked approximately eight hours each week. The worker provided his services personally on the firms' premises. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; centerless machine and qualite equipment. The worker did not lease any equipment nor were any business expenses incurred in performance of his services. The worker received an hourly wage for his services. The firms' customers paid the firm for the services the worker provided. The firm carried workers' compensation insurance on the worker. The worker did not assume any financial risk in the relationship. The firm established the level of payment for the services the worker provided.

The worker maintains that the firm provided a vacation and Christmas bonus after one year. The firm stated no benefits were made available to the worker. The worker did not perform similar services for others during the same time period. The worker performed his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

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**Analysis**

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**FINDING: Employee:** 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.

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 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. 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 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 an hourly rate. 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.