

# SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.9 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 the distribution of electronic components. The worker provided his services to the firm as a manager with services including inventory, inspection, shipping/receiving, codes and policies, and was in charge of six employees in 2012. He received the Form 1099-MISC for these services.

The firm instructed the worker to do all the tasks the job required such as; reading and learning all the codes and regulations that govern the firm. The firm added that the worker shadowed their employees to learn those jobs which allowed him to offer suggestions for improvement. The worker received his assignments from the firm and the firm determined the method by which the assignments were performed. If problems or complaints arose the worker stated that the firms' six employees reported to him and the others reported to the firms' sales manager. The firms' owner was responsible for problem resolution. The worker reported that the firm required the worker to submit upgrade procedures and daily shipment reports. Both parties agree that the worker had a set schedule working Monday through Friday beginning his day at 8:00AM and finishing his day at 6:00PM. He provided his services personally on the firms' premises.

The firm provided all the necessary supplies and equipment the worker needed to provide his services. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. He received a salary for his services. The worker did not assume any financial risk in the relationship. The worker indicated that the firm established the level of payment for the services the worker provided.

The firm stated in the contract that they were to provide the worker with paid holidays after 30 days. The worker did not perform similar services to others during the same time period. He provided his services under the firms' business name. Both parties retained the right to terminate the relationship without incurring liability. The worker maintains that the relationship ended when the firm terminated the contract after 45 days. The firm expressed that there was a mutual agreement between them and the worker to terminate his services.

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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 instructed the worker regarding the performance of his services. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of 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 worker had a continuous relationship with the firm as opposed to a single transaction. 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 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. 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.