

SS-8 Determination—Determination for Public Inspection

Occupation 01FMW.2 ForestMaintenanceWorker	Determination: <input type="checkbox"/> Employee <input checked="" type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a saw mill and building material distributor and the worker was engaged to provide truckloads of timber to the firm. The firm believes the worker was an independent contractor because he provided his own tools and equipment, he decided when to work, he decided who, if anyone, would work with him, he had his own insurance, he could work on other jobs or for other clients, and he signed a contract as an independent contractor. The worker believes he was an employee of the firm because all jobs were provided and dictated by the firm, the firm provided the cutting plans, and insurance was paid by the firm.

The worker was given the location of the timber lots by the firm and the firm states that the worker would look at or find timber lots on his own and request to be the logger. The worker, state regulations, and the cutting plan determined how the worker performed his services. The worker was not required to personally perform his services and the worker set his own routine and hours. The worker states that he would fill in for other loggers and this was handled amongst the loggers and did not involve the firm in this. The worker performed his services at various wood lots. While the firm states the worker was responsible for the hiring and paying substitutes or helpers, the worker states the firm was responsible for this.

The worker provided a chain saw and fuel for the chain saw in order to perform his services. The worker states the firm provided the skidder, fuel, cutting plan, and jobs to him in order to perform his services.

The firm provided a copy of an Indemnification Agreement and Lease of Equipment agreement between the worker (lessee) and a third party (lessor). This lease states:

- The lessor agrees to lease a skidder with winch for a term of 60 days. After the 60 days, the lease will automatically renew unless within 30 days prior to termination either party notifies the other in writing that the lease shall terminate.
- The lessee agrees to pay the sum of \$100 per load.
- Each periodic payment is due on Fridays.
- The amount of each periodic payment is \$100 per load harvested. The lease will be in default if the lessee fails to make payments of at least \$400 every 30 days to the lessor.
- The worker signed the lease agreement as president and manager of [REDACTED].

The firm states they did not reimburse the worker for any expenses he incurred. The worker states the firm added \$100 a load to his pay to cover the lease payment then he paid the \$100 back to the firm in cash. The worker states repairs and moving the skidder was the firm's responsibility. The worker states the firm required that he obtain insurance and the firm paid for his insurance premiums. The firm states they did not carry workers' compensation insurance on the worker. The worker was compensated on a per load basis and the firm reported the worker's earnings on Forms 1099-MISC.

There were no benefits offered or available to the worker. The worker did not perform similar services for others and there was no evidence presented that the worker advertised his services. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

As in this case and in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require any training or instructions from the firm. The firm provided the worker with his assignments but the worker drove himself to the job sites and worked the hours and days he determined. The fact that the worker filled in for other workers without any notice to the firm indicates the jobs did not have to be personally performed and that the firm was concerned with only the results of the services performed rather than the manner the jobs were performed.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker invested capital or assumed business risks, and therefore, he had the opportunity to realize a profit or incur a loss as a result of the services provided. The worker provided a chain saw, fuel for the chain saw, and entered into a lease agreement for a skidder with a minimum payment amount every 30 days whether a load of logs were brought in or not. This indicates the worker had the ability to incur a loss as a result of his services.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was engaged in an independent enterprise.

When it is difficult to come to a conclusion regarding the status of a worker, we look at the intent of the parties. In this case, the worker applied for and obtained a state harvester's license. The state requirements to obtain a harvester's license includes but is not limited to, completing an application, paying the applicable fee, studying for and passing an extensive exam, and obtaining continuing education credits. The worker had a written lease agreement with a third party in which he leased a skidder. The lease had a specific term and the worker was to pay the lessor \$100 per load for the rental of this piece of equipment with a minimum payment of \$400 per month no matter if he had brought a load in or not. This again shows an opportunity to incur a loss or realize a profit. The worker states he received an additional \$100 with each load to cover this payment; however, there was no evidence to prove this. The worker signed this lease agreement as [REDACTED] with the worker's name listed as president and manager. Neither party indicated that the worker had to personally perform his services. Based on the information provided by both parties and these factors we believe the intent of the parties was to create an independent contractor relationship.

Based on the above analysis, we conclude that the firm did not exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, but found that an independent contractor relationship existed.