

SS-8 Determination—Determination for Public Inspection

Occupation 01FMW.3 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 sawmill and the worker provided truckloads of timber to the firm's company. The firm believes the worker was an independent contractor because he supplied his own tools and equipment, he decided when to work, he decided if anyone would work with him, he had his own insurance, and he worked on other jobs for other clients. The firm states they paid the worker for all cut lumber. The worker believes he was an employee of the firm because all jobs were directed by the firm, the firm provided the cutting plans, and insurance was paid by the firm.

The locations of the timber lots were given to the worker by the firm if this info is available. The firm states the worker may also find timber lots on his own. The worker, state regulations, and the cutting plan determined how the worker performed his services. If any problems or complaints arose, the appropriate State Agency, the forester, the firm, and the landowner were notified and were responsible for the resolution. The worker was not required to submit reports or attend meetings. The worker determined the days and hours he performed services. 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 states he was instructed by the firm on how to cut the logs and where the jobs were. The worker states he was required to notify the firm if any problems or complaints arose for their resolution and the firm was responsible for the hiring and paying of substitutes or helpers.

The worker states the firm provided the skidder, jobs, fuel, and cutting plans to him in order to perform his services. The worker states he incurred expenses for chain saws and gas. The firm states the worker provided all supplies, equipment, and consumables in order to perform his services. The firm states the worker also incurred expenses for all transportation, cutting materials, and equipment which they did not reimburse the worker for. The worker was paid by the load and the firm reported the worker's earnings on Forms 1099-MISC.

The worker was not eligible for employee benefits. The worker states he did not perform similar services for others and did not advertise 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.

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. 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.