

SS-8 Determination—Determination for Public Inspection

Occupation 01PLW.12 PlantLandMaintenance	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 providing landscaping services. The worker was engaged to provide his labor for those services. He received a 2011 Form 1099-MISC; he received Form W-2 in subsequent years. There was no written agreement.

The worker indicated that the firm gave instructions on what to do and how to do it; the firm noted that the worker was already experienced in the line of work. Both parties agreed that the worker received his work assignments from the firm. Each indicated that the other party determined the methods by which the assignments were performed but agreed that the firm would be contacted if problems or issues arose that could not be resolved by the worker. There were no reports to submit. The worker noted that he left in the morning to pick-up the rest of the work crew in the firm's truck. He then picked up the equipment and trailer and met with the firm to get the days' job assignments. The firm noted that the worker determined his work start/end schedule for the day dependent on jobs to complete. Both agreed that the worker worked at the customers' locations. Only the worker mentioned the daily morning meetings. Both parties agreed that the worker was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided the equipment and tools; the worker added that the firm also provided the truck, trailer, business cards and company shirts. The worker noted that he was paid a salary; the firm noted that he was paid by the day and that he had no other economic risk. The worker noted any loss/damage to equipment would be deducted from his pay. Each indicated that the other determined the level of payment for services.

The firm indicated that there were no benefits provided in the 2011 year; the worker noted holidays and bonuses. Both agreed that either party could terminate the relationship without incurring a liability and that the worker did not perform similar services for others. The relationship ended when the worker, who was treated as an employee throughout 2012 to 2014, quit in 2014.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. While the worker may have been experienced in this line of work, the firm provided the worker with instructions regarding what needed to be done, where the work was to be performed along with his assigned duties. He performed his services according to the firm's scheduled jobs for the day, indicating some time flexibility. He picked up other workers and transported the firm's equipment to the job sites using the firm's truck and trailer. 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. In addition, the worker provided his services on a continuous basis throughout the time period involved. 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.

Please note that there is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods. The same direction and control the firm had over the worker when working full-time also existed when the worker worked part-time or temporarily.

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 did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker was paid a daily salary and had no other economic risk. The firm had the investment in the vehicles, equipment and tools. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

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. The worker was engaged to provide labor for various landscaping duties such as mowing, raking, debris removal, etc. When initially hired, according to the firm, the worker agreed to the independent contractor status. However, in [REDACTED], 332 U.S. 126, 1947-2 C. B.174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties. In other words, the type of relationship cannot simply be agreed upon when the facts support otherwise. The worker was not engaged in an independent enterprise when initially hired, but rather the services performed by the worker were always part of the necessary activities of the firm's operations whether his services were considered temporary or part-time. 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 the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.