

SS-8 Determination—Determination for Public Inspection

Occupation 01PLW.26 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

Information provided indicated the firm is a lawn care company. The worker performed services for the firm from 2011 through 2014 as a laborer. The firm reported the income earned on Form 1099-MISC stating the worker was a contract laborer because he used his own truck and equipment. The firm stated he has worked for him on an as needed basis since 2011. The firm indicated he worked for other companies in 2013. The firm indicated he had already been doing the services he required with his business in [REDACTED]. The firm would call him when they had assignments and let him know the work order was typed up and in the company mail box. The firm determined how the work was performed, but at times the worker would decide in what order he wished to do them. The firm would resolve any issues or complaints. There were no reports, he would highlight or check off when the jobs were completed. The routine and hours varied dependent on need. Services were performed at the firm's customer locations. The firm hired, paid and or reimbursed the worker if he paid subs. The firm stated they would usually work together on jobs the firm's truck, trailer, mowers etc., were used. He would occasionally use his truck, trailer and mowers. The firm indicated the worker was paid by the hour and by the job, it depended. They would pay for fuel for his equipment, if they were working on the same job. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker performed services also for [REDACTED] and others. Their permission was not required. He was represented as a contractor if asked performing services representing the firm's name. (Most of the time customers don't ask) The firm indicated when the 2014 season ended, the firm was put up for sale.

The worker stated the firm provided a list of the customers that had to be serviced. A copy of that list, on the firm letterhead, shows the customers that had to be done weekly and those that were serviced every 10 days. He gave verbal reports daily of what was completed. He reported to work from 9-10 daily, picked up the company truck, trailer and equipment. All were owned by the firm. He and [REDACTED] worked together on jobs, at the firm's customer locations. [REDACTED] worked by himself and he used his own truck, trailer. He hauled equipment that was also owned by the firm, not his own equipment. The owner would check in periodically to see how work was going. The firm hired and paid all workers. He stated he did not provide his own truck or equipment; he lived in an apartment building, where everything was taken care of. He stated he was paid by the hour. He agreed the customers paid the firm. He was represented as an employee of the firm. It was seasonal work, so it ended when winter arrived.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

ANALYSIS

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.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to contr

Analysis

continued...

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. As is the case 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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.