

SS-8 Determination—Determination for Public Inspection

Occupation

02ABT.5 Accounting/TxPrepWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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. [REDACTED], chief financial officer of the firm, responded to our request for completion of Form SS-8.

From the information provided the firm is a cargo ground handler and the worker was engaged to perform miscellaneous accounting duties. The worker was required to personally perform his services at the firm's premises from 25 to 40 hours per week. The worker received training from the firm's accounts receivable manager. The worker received his assignments from this manager and this manager determined how the worker performed his services. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was required to submit time sheets to the firm via email. The worker was not required to attend meetings.

The firm provided a computer and all equipment, supplies, and materials to the worker in order to perform his services. The worker did not incur expenses and the firm paid the worker at an hourly rate. The firm reported the worker's 2012 earnings on a Form 1099-MISC. The firm states they carried workers' compensation insurance on the worker.

The worker did not perform similar services for others and he did not advertise his services. Either party could terminate the work relationship at any time without either party incurring a liability. The firm terminated the work relationship.

Analysis

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, the firm trained the worker, they provided the worker with his assignments, and they determined how the worker completed those assignments. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.