

SS-8 Determination—Determination for Public Inspection

Occupation 02COO.21 Coordinator	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 worker requested a determination of employment status for services performed for the firm in 2013-2015. The firm responded to our request for information. The firm's response:

The firm stated they are in the business of manufacture and assembly of extruded, formed and molded products to the automotive and commercial market. The present firm was purchased in April 2013 and the name was changed to [REDACTED]. The worker performed services as a service representative. He performed the same services for the prior company. He represented [REDACTED] to their customer base and responded to quality/engineering issues. The firm believes the worker was correctly treated as an independent contractor as he signed an agreement that he was an independent contractor.

The worker had already been trained by the prior owners. He was responsible for scheduling his own work assignments but was provided with, and provided input to, a proactive visit schedule provided by the quality department of the firm. He determined his own methods. The worker reported to the quality manager if problems arose. Invoice and expenses reports were required for payment/reimbursement. The worker personally performed his services at the firm's customer locations as provided in the agreement. The firm reimbursed the worker for travel expenses. The worker was paid on a lump sum basis. Customers paid the firm. Either party could have termination without liability. The firm sent in payroll records, the worker's service agreements for each year, a list of vendors, copies of 1099s, copies of cash disbursement reports, examples of plant visit reports that required an approval signature, example expenses reports, and an example invoice.

Analysis

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. Therefore, a statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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. 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. The worker received his assignments from the firm and reported to the firm when problems occurred. The worker was experienced and did not require training. He was accountable to the firm and the firm maintained the right to direct and control the worker, even if they did not exercise that right.

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. 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. The worker received a regular salary, he had no investment, and the firm paid his expenses related to the work performed.

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

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker had no investment in the firm's business, received a regular paycheck, and could not suffer a loss.

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.

Firm: For further information please go to www.irs.gov Publication 4341