

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.23 OfficeWorker	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 a auto and truck rental business operation. The firm engaged the worker through an application process to perform office work and other duties for the firm's business operation. The worker was experienced so the firm did not provide any formal training. The firm provided instructions to the worker on the firm's computer system operation and other jobs as needed. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm indicated no reports were required to be submitted by the worker. The worker indicated work related reports on rental manifests and business reports were submitted to the firm. The worker worked a variable schedule based on the firm's business needs. The firm required the worker to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers as needed.

The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services and rentals. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did not perform similar services for others. The worker did no advertising. The firm referred to the worker as a firm representative to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, you not the worker had control over the methods and means used in the performance of the services.

You provided all the business equipment, materials, and supplies the worker needed in order to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. You paid the worker an hourly wage and your customers paid you. You determined the level of payment for the services and rentals. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for your business operation. These facts evidence financial control by you over the services performed by the worker.

There were no contracts between you and the worker. The worker did not perform similar services for others while performing services for your business. The worker did no advertising as a business to the public. The worker personally performed services for your business at your place of business on a regular and continuous basis over several months under your business name. Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.