

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.50 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 food distribution business operation. The firm engaged the worker through another employee to help perform clerical work in order to meet deadlines required by the business operation for a period of about 5 weeks in 2013. The worker was experience in the firm's software so no formal training was provided. The firm's designated employee provided the worker with the necessary instructions on how and what work needed to be performed. The firm and firm's employee determined the methods used by the worker to perform the services. The firm required the worker to contact the firm's employee regarding any problems or complaints for resolution. The worker performed the services during a firm's established schedule based on the work load needed to be performed. The firm required the worker to perform the services personally at the firm's place of business.

The firm provided 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 products sold. The firm did not carry 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 or advertise as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The relationship ended when the job was completed.

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 long term 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 and your designated employee not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by you over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going significant capital outlays being made an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. You provided everything the worker needed in order to perform the services. You paid the worker an hourly wage and you were paid through your customers for the products and services. You determined the level of payment for the services and products. The worker could not suffer any economic loss with regard to the services performed. The worker did not have control over profit and risk of loss with regard to the services the worker 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 short term clerical services under your designated employee's direction and control at your place of business under your business name on a regular and continuous weekly basis until the job was completed.

Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.