

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.237 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

Information provided indicates the firm is in the business of renting special needs equipment to customers sailing on cruise ships as passengers. The worker provided services as a Port Agent starting in November of 2010 through 2015. The firm reported the income paid on Form 1099-MISC. The firm states they did not direct, oversee, or supervise any aspects of the delivery operation, therefore treating the workers as independent contractors.

Information finds we previously issued a work classification determination to this firm, for the occupation of the firm's Port Agents in March 2016, finding the Port Agents to have been employees.

As in the first case, this worker has provided documentation showing the firm did in fact provide training in the services performed. The firm provides a Warehouse, Delivery, Pick up procedures manual to all workers. The first sentence of that manual states, " you are representing [REDACTED] " We pride ourselves on our good reputation and professionalism. The workers are required to follow a strict dress code at all times. All orders are to be entered onto the firm's data base. All orders were to be confirmed. Delivery windows were between nine am to one pm. Pages of other directions as to how equipment was to be delivered, and cared for are included. Other documentation has been provided by the worker to further substantiate an employer/employee work relationship.

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.

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 concur with the original work classification determination. The firm maintained direction and control of the services provided. They provided training, procedure manuals establishing how, and when and what time lines services were to be performed. The services are performed on a continuing basis, and not a one time service. The workers are required to follow a strict dress code. The worker was provided with a company credit card and was reimbursed to expenses. The worker was paid by the hour. Therefore it is again established that the worker was a common law employee, and not an independent contractor operating a trade or business.