

SS-8 Determination—Determination for Public Inspection

Occupation 02RET.7 Retail Worker	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 a thrift store in the business of fairly new used merchandise. The worker provided his services to the firm as a retail worker with services including customer issues, opened and closed the store, ran the register, listed the firms' items on [REDACTED] in 2012 and 2013 and received the Forms 1099-MISC for these services.

The worker stated that the firm's owner trained the worker to do all the aspects of the job required. The firm contends there was no training or instruction. The worker received his assignments from the firm's owner and the owner determined the methods by which the assignments were performed. The firm indicated that the workers' assignments were determined by the firm's available inventory to be listed on [REDACTED], and the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm's owner who was responsible for problem resolution. The firm maintains that worker contacted either [REDACTED] or the firms' customers to resolve issues. The worker had a set schedule working five days a week, beginning his day at 10:00AM and finishing his day at 6:00PM when the store closed. The firm expressed that the worker's schedule was his own discretion. He provided his services personally on the firms' premises. If additional help was required, the worker stated that the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; the inventory, computer, internet connection, and camera. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services for the firm. He received an hourly wage for his services. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The worker explained that the firm established the level of payment for the services the worker provided. The firm contends that the worker established the level of payment for the services he provided.

The worker did not perform similar services to others during the same time period. The firm indicated that the worker did perform similar services to others during the same time period. He provided his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm trained the worker regarding the performance of his services. 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 firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

The worker had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. His pay was based on an hourly rate. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The worker may have provided similar services for others. In this relationship with the payer, the payer retained the right to direct and control the worker. Additionally, it is possible for a person to work for a number of people or payers concurrently and be an employee of one or all of them. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.