

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL.65 Salesperson	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 in the business of car rentals for [REDACTED]. The worker provided his services to the firm in 2014 as a rental sales associate creating rental contracts, cleaned the rental vehicles, opened and closed the store and received the Form 1099-MISC for these services.

The firm trained and instructed the worker to do all the tasks the job required including computer training, lectures on company procedures, and on-site training on dealing with the firm's customers. The worker received his assignments either verbally, by phone, e-mail or text messages and the firm determined the methods by which the assignments were performed. The firm contends that the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The worker stated that the firm required him to submit closing reports and online inventory reports through the firm's computer system. The firm indicated that there were no reports. The worker had a set schedule working 33 hours, five days per week. The firm maintains that the worker determined his own schedule. He provided his services personally on the firm's premises. The firm held monthly meetings and the penalty for not attending was a write up against the store. The firm expressed that there were no meetings. If additional help was required, the worker stated that the firm hired and compensated the helpers. The firm stated that the worker hired and compensated the helpers, and the firm reimbursed the worker.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; rental vehicles, cleaning solutions, contract paper, pens, wash rags, phones, keys, and alarm codes. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. He received an hourly wage for his services. The firm's customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm established the level of payment for the services the worker provided.

The worker did not 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. In fact the relationship ended when the worker was fired.

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 instructed the worker regarding the performance of his services. 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 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. 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. 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. Either the firm or the worker could terminate the agreement. The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

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.