

SS-8 Determination—Determination for Public Inspection

Occupation 03FMW.11 Factory/Mill 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 is a gift item manufacturing and sales business. The firm engaged the worker through [REDACTED] and an application process to perform assembly and shipping services for the firm's business operation based on the firm's customers orders. The worker received minimal training on how to perform the services from the firm. The worker received job assignments through customer orders. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm's office manager regarding any problems or complaints for resolution. The worker worked on a flexible schedule basis per the firm and the worker indicated working 8 hour shifts. The firm required the worker to perform the services personally at the firm's place of business. Substitutes or helpers would be hired and paid by the firm if needed.

The firm provided 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 only commuting expenses. The firm paid the worker an hourly wage and the customers paid the firm for the products. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker understood that the work was being performed and paid as an independent contractor. The firm did not provide the worker with any benefits. The worker had another job per the firm. The worker indicated that no similar services were performed for others while performing services for the firm. The worker did no advertising as a business to the public. 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. In this case the firm engaged the worker through an application process to perform services for the firm's wholesale gift item sales and manufacturing business. The firm provided the worker with minimal processing and procedure training. The worker received job assignments through the firm's customers orders. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm allowed the worker to work on a variable flexible schedule basis. The firm required the worker to contact the firm's office manager regarding any problems or complaints for resolution. 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 if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk 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. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided 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 for the products sold. The firm determined the level of payment for the services and products. 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 profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated the worker understood that the work was classified as being performed as an independent contractor, a Form 1099-MISC would be issued at year-end, and no taxes would be withheld. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm indicated the worker had another job. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous basis over a period of about 5 months.

Both the firm 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.