

SS-8 Determination—Determination for Public Inspection

Occupation 03IEI.2 Inspector	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 worker initiated the request for a determination of his work status as an inspector in tax year 2013. The firm's business is described as inspecting parts for ██████████. The firm issued the worker Form 1099-MISC to report his earnings.

The firm's response was signed by ██████████, owner/operator. The firm's business is described as consulting service. The worker performed services to maintain and enhance liaison contacts between part suppliers, assemblers, material handlers, and OEM's.

According to the firm, other liaisons/workers and customers provided troubleshooting and instructions as necessary. The firm indicated that the worker determined the methods by which the services were performed. The worker was to contact the customer, other liaisons, and program managers if he encountered a problem that required resolution. The worker provided communication, investigation, and inspections as needed at various locations as requested by suppliers and OEMs. The services were rendered at customer locations. The firm responded that the worker was required to perform the services personally.

The worker indicated that on-the-job training was given by other workers. The job assignments was a call or text from the boss. The firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. He worked at two different plants from either from 6 a.m. to 2:30 p.m. or 2:30 p.m.-10:30 p.m. The worker provided reports such as how many doors were damaged and how were they fixed. He was to perform the services personally; any additional personnel were hired and paid by the firm.

The firm provided nothing to the worker; worker provided his phone and safety glasses. The firm paid the worker a lump sum; the customer paid the firm. Both parties concur that the worker was not covered under the firm's workers' compensation insurance policy. They firm and worker agreed that the worker was not at risk for a financial loss in this work relationship. The worker responded that the firm provided safety vest, goggles, and any needed tools; worker furnished nothing. The worker stated that he had to travel to the further location he was paid gas money which was just an hour of extra pay. The worker indicated he was paid an hourly wage.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not providing same or similar services to others during the same time frame. The firm stated that the worker left to attend college full time.

The firm provided a copy the Independent Contractors Agreement Customer Liaison, dated 4/18/2013 and allegedly signed by the worker and the area manager. The agreement was vague as to the services to be performed; and, it should be noted that Attachment A was not provided.

Analysis

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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. See Rev. Rul. 70-630, 1970-2 C.B. 229.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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 establish that the worker was a common law employee, and not an independent contractor operating a trade or business.