

SS-8 Determination—Determination for Public Inspection

Occupation 03IEI.8 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 firm is an engineering company that is in the business of providing surveying and engineering plans to customers. The worker was engaged to provide field surveying. He received a 2014 Form 1099-MISC for his services. There was no written agreement.

Both the firm and the worker agreed that the firm provided training to the worker to survey electrical poles; the worker noted that the training lasted three weeks. Both also agreed that the [REDACTED] Project Manager provided the worker with his work assignments; the worker noted that his work area and poles for the day were delineated in the electronic tablet provided. Both parties agreed that the firm determined the methods by which the assignments were performed and the firm's [REDACTED] Manager would be contacted if any problems or issues arose. Only the worker mentioned that the pole information gathered by the team was uploaded onto the firm's electronic tablet. Both parties agreed that the worker had set scheduled work hours with the worker describing his work routine encompassing ten hour days, four days a week, at various sites as directed by the firm. Both parties agreed that there were required meetings. Both also agreed that the worker was required to provide the services personally with the worker noting that only the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided the electronic tablet and the laser sight surveying equipment. The firm noted that it reimbursed any hotel expenses if applicable. The worker noted that he incurred travel, gas and meal expenses that were not reimbursed. Both agreed that the worker was paid an hourly rate; only the firm mentioned that the worker could incur an economic risk from loss or damage to the firm's equipment provided. The customer paid the firm. The firm noted that it carried worker's compensation insurance on the worker. Both parties agreed that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. Both agreed that the worker was represented as an employee of the firm. The relationship ended when the worker quit.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm provided the worker with training and instructions as well as set scheduled work hours and days. 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 term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses. In this case, the worker performed his services on an essentially full-time basis, illustrating the firm's control over the worker's work activities. He provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists.

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. Not only did the firm provide specific training needed for the pole surveying, it provided the equipment needed as well. The worker simply received an hourly rate of pay. 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.

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. There were no benefits and there was no written agreement. The worker was engaged and trained a pole surveyor, one of the services that the firm provided to its customers. The worker did not advertise or hold himself out to the public to provide similar services for others. 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.

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.