

SS-8 Determination—Determination for Public Inspection

Occupation 03INS Construction, Trades & Technical Services	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

Information provided for this case shows that the firm is in business as a supplier and installer of quality residential replacement doors, windows and awnings. The firm engaged the worker to perform services as an installer. The firm treated the worker status as independent contractor as they believed the worker was in business for himself to perform similar services for others. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

At the start of the work relationship, the worker performed his services alongside other installers. The firm provided work assignments, of which the worker could accept or decline. Assignments were contracts that the firm had with its customers, and service measurements. All work was kept at the firm's location. Work methods were determined by the firm and worker. Problems that the worker could not resolve with the firm's customers were reported to the firm for resolution purposes. The worker performed his services personally at the firm's customers' locations.

The firm provided the doors, equipment, caulking, coil, table, table saw, chop saw, and ladders needed to perform the services, and the worker provided his own personal tools and truck. The worker incurred expenses for the items he provided, and for tolls, fuel, and general liability insurance. The firm paid the worker on a piecework basis, per completed job. The firm indicated that the worker established the amount of payment to be received for his services, and provided the firm with copies of invoices under his business name for payment purposes. Customers paid the worker for services rendered, and the worker in turn remitted the total of all sales to the firm.

The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The worker performed similar services for others, and advertised his services to others. The work relationship with the firm was continuous, and could have been terminated by either party at any time without incurring liabilities.

There was no information provided in this case to evidence a written agreement/contract for services between the parties, or that the worker bid on jobs from the firm. A review of the invoices provided by the firm shows that they were submitted on a weekly basis, and were not submitted in the name of a business, but rather were submitted in the worker's personal name with an ID number. The invoices show the days worked, days not worked within a week. These documents show such information as the customers' names, completed tasks for each customer, and amounts due for each completed task. A review of the pay documents issued to the worker shows that the firm issued them to the worker's personal name and SSN, and not to a business name, or a D/B/A. Research of general liability insurance policies indicates that they can be obtained by worker's to offset expenses not covered by an employer.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. Installers were deemed part of the firm's team. Although the worker may have been experienced in his services, he performed services in the name of the firm, for its customers, following the firm's schedule and routine. Based on this information, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, the reputation of its business operations, and its business relationships with its customers.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. There was no information provided to support that the worker had a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker's services were performed as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed installation services as a necessary and integral part of the firm's supplier and installation business operations. 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov