

SS-8 Determination—Determination for Public Inspection

Occupation 03INS.37 Installer	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 indicated the firm is a low voltage communications cabling business. The worker had been retained by the firm in tax year 2014 as an installation technician. The firm indicated there was not a written or signed agreement. The firm provided a drawing of the building and site walk for questions and clarification of the scope of work to be performed. Work assignments were given verbally. The firm indicated the worker was required to contact the plant foreman or director if there were any issues. Yet they said the worker was responsible for resolution of errors or omissions in the scope of the work. No reports were necessary, the firm indicated they did a site walk through when the work was completed. All services were performed at the firm’s customer location. The worker was required to perform services personally. The firm stated the worker could provide helpers as long as they had a clean background. The customer would have to approve them. The firm indicated the worker would have paid them. The firm indicated they provided all materials. The worker provided the necessary tools. A third party provided a lift if it was necessary. The firm indicated the worker was paid on a piece work/lump sum basis, with cash advances given. The customer paid the firm. The firm stated a per cable or per project amount was discussed verbally between the firm and the worker, when they did the site walk through. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The firm stated he was represented as a partner/independent contractor. Services were performed under the prime contractor’s name. The firm indicated the contract ended.

The worker agreed he performed services as a cable installation technician for the firm. The worker indicated work assignments were given verbally from [REDACTED] on a daily basis. [REDACTED] was responsible for resolution of issues. He indicated he performed services eight to ten hours per day, Monday through Friday. He agreed services were performed at the customer locations. His services were to be performed personally. The firm hired and paid all workers. The worker agreed all supplies were provided by the firm. He provided some tools. He indicated he was paid by the hour. He agreed the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He indicated he was represented as an employee of the firm. He indicated he quit.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, 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.

Analysis

ANALYSIS

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

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 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.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the information provided by the firm and worker I find the worker to have been an employee. All work had been performed under the firm's business name. Services were performed Monday through Friday, eight to ten hours per day, indicating a full time work relationship. The worker was paid either by the hour, or per project with cash advances and had no financial investment in equipment or materials. All were provided by the firm. The customer paid the firm for the services performed.