

SS-8 Determination—Determination for Public Inspection

Occupation 03INS.39 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 sells and installs fire alarms, fire extinguisher systems, kitchen hood suppression systems, sprinkler systems design and installation services. The worker did building sprinkler system installation and fire alarm wiring installation services for tax years 2013 and 2014. The firm reported the income on Form 1099-MISC. The firm indicated the worker is given a job with specific set plans to perform the installation service. The firm indicated the company owner and/or project manager determine how that work is done. They are also responsible for resolution of any issues. The worker would report to the job site during posted job site hours, and install the systems ordered per the set of plans given. The firm indicated, the job and job site dictated the hours worked, it could range from 8 hours in a given week to 60+hours per week. Services were performed at the [REDACTED] Client locations. The worker attended job site safety meetings. He was required to perform the services personally, no helpers were allowed. The firm indicated they provided all materials, wiring and piping to be installed. The worker provided his own tools. The worker was paid a set labor rate by the hour, (it was negotiated he got \$60 per hour for Sprinkler installation and \$35 per hour for fire alarm installation services.) plus mileage. The customer paid the firm. The firm also carried workmen’s compensation insurance and liability insurance (due to the high cost). No benefits were given. 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 they represent the contractors under the firm’s name and all work is performed under the firm’s name. The worker informed them he could no longer perform services. The firm provided a copy of the dates worked and amounts paid for 2014.

The worker agreed work assignments were given from the supervisor of the firm. He indicated the firm was responsible for resolution of any issues. Both he and the supervisor determined how the work assignments were performed. He indicated he provided time sheets of the hours worked. He would drive to the job location and work however many hours needed to complete each job. Services were performed at the firm’s customer location. The firm obtained all contracts. He was required to attend all scheduled meetings. He agreed he was to perform his services personally. The worker agreed the firm provided the materials, invoices and other paperwork. He agreed he provided his own tools. He agreed he was paid by the hour and the customer paid the firm. He indicated the firm did carry workmen’s compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. He indicated he did not perform similar services for others. He was represented as an employee under the firm’s business name. He indicated he got done due to medical issues.

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

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. 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.

-A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

-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 they the firm's clients, gave the firm the right to ensure the work was performed under the guidelines promised to their clients.)

-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.

-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.

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 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.