

SS-8 Determination—Determination for Public Inspection

Occupation 03INS.41 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

The worker initiated the request for a determination of his work status as an installer of security and video surveillance systems in tax years 2014 through 2016. The firm's business is described as the installation of security and video surveillance systems.

The firm's response was signed by the VP of Operations. The firm described its business as the sales and installation of security systems and cameras. The worker performs services as an installer of alarm and video security equipment. The firm indicated the worker provided services from 2010 through February 2014. The worker was injured and was off for 5 months; during this time the firm hired contract labor. When the worker returned he signed a '1099' like all the contract labor. It should be noted that the firm issued the worker Form W-2 for tax years 2010 through part of 2014. From his return to work through 2015 the firm issued Form 1099-MISC to report the worker's earnings.

According to the firm, the firm has a standard operating procedure for each type of alarm or video installation. When jobs become available they are distributed to workers. The firm's VP of operations determines the methods by which the job assignments are performed and is the party contacted in the event the worker encounters a problem or complaint that requires resolution. The worker is required to report on the completed installations performed at customer locations. The worker is required to perform the services personally; the firm hires and pays for substitutes and/or helpers.

Both parties concur that the firm provides all equipment, screws, gas for out-of-town trips, and wires; the worker furnishes his vehicle and drills. The worker does not lease equipment, space, or a facility and does not incur expenses in the performance of the job. The worker is paid by the job. The customers pay the firm. The worker is not at risk for a financial loss in this work relationship; there is a set payment per job sold, no matter how long it takes. The firm establishes the level of payment for services rendered and products sold.

There are no benefits extended to the worker. Either party can terminate the work relationship without incurring a liability or penalty. The worker is not performing same or similar services for others. The worker is provided with business cards and shirts. The worker is represented as the firm's technician and the services are rendered under the firm's name.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

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 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.

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.

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. "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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retains 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 are met. The worker is not operating a separate and distinct business; the worker does not have an investment of capital or assume business risks, and therefore, he does 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 is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.