

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS Miscellaneous Laborers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a janitorial business with one client and the worker was engaged as a part-time janitor. The firm believes the worker was an independent contractor (IC) of their company because both the worker and her spouse requested to be paid on a 1099 at the end of the year. The firm reported the worker's earnings on a Form 1099-MISC. There was no written agreement between the firm and the worker. The worker is requesting the determination for the 2017 tax year but it is noted that she also performed services for the firm in 2011-2016. The worker no longer works for the firm.

The firm states they instructed the worker on how to perform cleaning services according to their client's requirements. The worker had the same tasks each day and the firm states they determined how the worker completed those assignments. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit reports to the firm or attend meetings. The firm states the worker's routine consisted of them picking the worker up and driving her to the client's premises; the worker, with another person would clean the client's premises, the firm would buy the worker a meal, and then drive her home. The firm states the worker performed her services four (4) hours each weekday. The firm was responsible for the hiring and paying of substitutes or helpers.

The firm states they provided all supplies and materials to the worker in order for her to perform her services. The worker did not incur expenses, the clients paid the firm for services rendered by the worker, and the firm paid the worker at an hourly rate. The level of payment for the services provided was established between the firm and the worker.

The firm states the worker was eligible for personal days and bereavement time. The worker did not perform services for others and she did not advertise her services. The worker was represented as one of the firm's janitors. Either party could terminate the work relationship at any time without either party incurring a liability. The firm states the worker terminated the work relationship.

Analysis

As in this case and 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, the firm provided the worker with her assignments and they determined how the worker completed those assignments. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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.

There was no evidence presented or found in this investigation that the worker had a business license or business registration in the state where she performed services. The firm established the rate of pay for the worker.

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

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.