

SS-8 Determination—Determination for Public Inspection

Occupation

Construction, Trades & Technical Services

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a wholesale metal cutting business for home decor. The worker was engaged as a laborer. The firm states the worker was engaged as a subcontractor, and therefore treated the worker status as independent contractor. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker received instructions on how to pack and ship orders. The firm provided daily work assignments and determined the work methods by which to perform the services. The worker was required to perform her services personally at the firm's shop location. She was required to contact the firm regarding problems that needed resolution.

The firm provided the worker with the facilities, equipment, tools, and supplies needed to perform her services. The worker provided her own steel toed footwear, gloves, and tools. The worker incurred expenses for the items she provided, and for her own transportation to the firm's location (personal vehicle and fuel expenses). The firm paid the worker on an hourly wage basis for her services. Customers paid the firm. No information was provided in this case to support that the worker incurred economic loss or financial risks related to the services she performed for the firm.

The firm did not cover the worker under workers' compensation insurance. The firm did not make employment benefits available to the worker. The worker did not perform similar services for others, nor did she advertise her services to the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location, using its facilities, equipment, tools, and supplies. The worker represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. 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. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her 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 performed services 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 she performed her services as a necessary and integral part of the firm's 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