

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

Facts of Case

The firm is a retail merchandise business. The firm engaged the worker, on a part-time basis, to perform retail merchandising services such as assembly/set up of barbecue gas grills and wheelbarrows. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received training and instructions on how to perform the services from another worker. The firm provided daily work assignments via phone calls and texts to advise the worker of the store locations where his services would be performed. The firm and worker both determined the work methods by which to perform the services. The firm required the worker to report problems to human resources for resolution purposes. The firm required the worker to perform his services personally, and required the worker to provide time sheets.

The firm provided the worker with the merchandise to be assembled. The firm and worker both provided the tools needed to perform the assembly services. No information was provided in this case to support that the worker incurred work related expenses, or that he incurred economic loss or financial risks related to his services. The firm paid the worker on an hourly wage basis for his services. Customers paid the firm for services rendered.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and did not advertise his 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, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm, using merchandise and supplies provided to him. The worker represented the firm's business operations in the performance of his services. These facts show the firm retained the right to direct and control the worker to the extent necessary to protect its investments, 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 his 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 he performed his 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