

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.5 MiscLaborServices	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

According to the information and documentation submitted, the firm's business owns and manages fifty four apartments in an apartment complex. The worker performed remodeling and general maintenance services at the apartment complex. The firm reported the worker's earnings on Form 1099-MISC at year end.

The firm provided the worker with his job assignments by telling him which apartments needed work and walking through the apartments to determine what needed to be done, the materials needed, and how long to complete the job. The worker personally performed his services at the firm's apartment complex in the various apartments.

The firm provided the worker with materials for the worker to perform his services. The firm reimbursed the worker for any materials needed such as cabinets and counter tops. The firm paid to the worker an hourly wage for his services. The worker had no investment in facilities. The worker was free to terminate his services without incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the firm provided the worker with his job assignments. The worker personally performed his services at the firm's apartment locations.

The firm provided the worker with materials needed for the worker to perform his services. The firm reimbursed the worker for materials. The firm paid the worker an hourly wage for his services. The worker had no investment in facilities, or equipment, and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346.

If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. See Rev. Rul. 70-309, 1970-1 C.B. 199.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.