

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.7 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

The firm is a corporation in the business of operating a worm farm. The firm engaged the worker as a harvester. There was no written agreement between the two parties. The worker answered a classified ad in the local paper and filled out an application for the position.

The worker received training how to harvest the worms. The worker received her assignments from her supervisor. The firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker's schedule began at 7:00 a.m. every other day. The worker performed her services at the firm's location. The worker was required to perform the services personally.

The firm provided all the supplies and materials the worker needed to perform her services. The worker was paid on an hourly basis. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of her services.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker stated she was initially told she was an employee and the firm stated they represented her as a contractor. The worker terminated her services.

The worker provided a copy of the Help Wanted Classified Ad the firm put in the local paper. The ad stated \$10/hr. 5 -8 hrs. every other day, leading to full-time. Morning hours. Must be reliable.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the firm did control the worker by training the worker how to perform her services. The fact the firm gave the worker her assignments and determined how those assignments should be performed showed control over the worker. The firm required the worker to perform her services personally which demonstrated the firm was interested in the methods used as well as being interested in the end result as an employer. The firm had the financial investment since the firm provided the worker with the location, supplies and materials for the worker to perform her services. Financial control by the firm was also demonstrated by the firm setting the worker's hourly rate of pay. The worker harvested wax worms for the firm's worm farm business which showed the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989