

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.14 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 comedy club. The worker was engaged to perform services as a laborer. The firm issued to the worker Form 1099-MISC at year-end to report the monies received for services performed as non-employee compensation.

The worker received instructions/training on how to perform her services through shadowing. She was provided with a checklist to complete for every shift worked. The firm determined the work methods by which to perform the services. The worker reported problems and complaints to the firm for resolution purposes. The worker performed her services personally, at the firm's location, on a part-time basis.

The firm provided all items needed to perform the services. The worker did not incur work related expenses. There were no economic losses or financial risks incurred by the worker in the performance of her services for the firm. The firm paid the worker on a piecework basis, and hourly wage basis, for her services.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others. The worker did not advertise her services to others. The work relationship was continuous as opposed to a one-time transaction.

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. The worker used the firm's facilities, equipment, tools, and supplies and 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