

SS-8 Determination—Determination for Public Inspection

Occupation

03MIS.24 MiscLaborServices

UILC

Determination:

☒ Employee

☐ Contractor

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a moving company. The worker was engaged as a helper for moving jobs. He received a Form 1099-MISC for his services in 2007 as well as in 2010. There was no written agreement.

The worker indicated that he followed orders on the job whereas the firm noted the worker received details of a particular job from the customer contract. The worker indicated that he reported to the firm's office to get his work assignment; the firm noted that he picked which one he would work. Each party indicated that the other determined the methods by which the assignments were performed. The worker noted that either the foreman or driver of the truck handled any issues that arose; the firm agreed and noted that it was rarely contacted for problem resolutions. The worker noted that the job foreman filled out a report of hours worked; the firm noted that the customer would sign that the job was completed. The worker usually worked a full day or more and rode in the firm's truck to/from job unless there was not enough room to transport all the workers needed for the move. Then he would ride with others or take his own vehicle. There was no set daily work routine according to the firm. Both parties agreed that all the work was performed at the customers' locations. Both also agreed that the worker was required to provide the services personally and that only the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided the truck, handcarts, dollies, any other equipment and supplies need for the job. The worker noted that if he had to use own car to get to the customer's job site, he would be reimbursed. Both parties agreed that the worker was paid an hourly rate though the firm added that it depended on the job. The worker did not receive any advances. Both also agreed that the customer paid the firm. The worker had no other economic risk besides loss of his compensation. Each party indicated that the other established the level of payment for services with the firm noting it was mutually agreed upon at the start of a job.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others during the same time period; the firm disagreed. There was no written agreement. The relationship ended when the worker did not inquire about additional work.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Though the firm indicated that the worker's instructions came from the customer's contract, the firm obtained the contract, issued the contract and remained responsible to the customer and for the job. This worker was part of a moving crew; he was not the foreman nor the driver. He reported to the firm's office for jobs and was told when to work and where to work. He was directed by the firm's foreman on the job. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker simply received an hourly rate of pay and had no other economic risk. 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.

The firm provided the truck as well as the needed equipment and supplies to provide the moving services to its customers. The worker supplied the labor needed to perform the move and had no investment in a business to do so. 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. In this case, the worker was part of a moving crew and was not engaged in an independent venture, but rather the services performed by the worker were part of the necessary activities 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 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.