

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.27 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 payer provides cleaning services. The individual provided her services for the payer for the years 2012 through 2014 as a cleaning person. The monies she received for the services she provided was reported on Forms 1099-MISC.

The worker was hired after inquiring about a position. The payer provided the worker with instructions regarding the duties she was to provide and the manner she was to provide her assignments. She received her assignments in a written contract from the payer and verbally. The worker's responsibilities included: cleaning, dusting, vacuuming, sweeping and mopping. The worker provided these services Monday through Friday from 5:00 PM to 9:00 PM for twenty hours per week. If any problems or complaints arose as a result of the worker's services, the firm was responsible for problem resolution. The worker provided these services on the payer's client's premises and she was required to provide these services personally.

The payer stated that there was an agreement that the worker would be treated as an independent contractor. The worker's classification as an employee or as an independent contractor is determined by the actual facts of the relationship.

Both the payer and the worker stated that the payer's client supplied the cleaning materials. The worker did not need to purchase or lease any significant equipment used in providing her services. The payer's client paid the firm directly. The worker stated that the payer determined the level of payment and she received a monthly wage.

She did not advertise her services to maintain a business of a similar nature while providing her services for the payer. The worker was required to wear a t-shirt with the payer's business name displayed indicating she was providing services for the payer. The worker provided her services for the payer's client on the client's premises and she was represented as the payer's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker was terminated without notice.

Analysis

The worker had the skills necessary to provide her services. 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 or instruction was only given once at the beginning of the work relationship. 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. The payer retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. The facts show that the worker was subject to certain restraints and conditions that were indicative of the payer's control over the worker.

The worker rendered her services personally. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the payer's supervision.

Her pay was based on a monthly wage. 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. She did not have any financial investment in a business related to the services performed and she could not have incurred a business profit or business loss in the performance of her services for the payer. The above facts do not reflect a business presence for the worker, but rather, strongly reflect an employer-employee relationship. Based on the common-law principles, the payer had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.