

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.35 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 providing rental and repair services to their customers. The firm engaged the worker as a mechanic. The worker was required to fill out an application for the position. The two parties entered into a written agreement.

The worker received no instructions from the firm in question. The worker received his assignment from the firm. The worker stated the firm determined how the assignments should be performed and the firm stated the worker chose his assignments. The worker relied upon the firm to resolve problems and complaints. The worker stated he repaired the equipment as instructed by the firm from 8:00 a.m. to 5:00 p.m. and the firm stated the worker comes when they have work for him. The worker performed his services at the firm's location. The worker was required to perform the services personally.

The firm provides the customers, repair parts, and tools for the worker to perform his services. The worker did not lease any space to perform the services. The worker stated he was paid by the hour and the firm stated he was paid on commission. The customers paid the firm directly. If the customer paid the worker the worker then turned that amount over to the firm. The firm established the level of payment for the services provided.

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 was not part of a union. The worker stated he was represented as an employee and the firm stated they did not represent the worker. The worker terminated his services.

The firm provided copies of invoices from the worker. The invoices included the worker's name, the dates he performed his services and what piece of equipment he worked on for each date.

The firm also provided a copy of an independent contractor agreement signed by the firm and worker. The contract listed the services a mechanical/tech services. The services would be provided until the project was completed/as called upon. The worker was required to submit a weekly invoice. The worker signed the contract, printed his name, and under title he put employee.

Analysis

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.

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.

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.

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.

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.

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.

The worker was an employee according to common law. The information provided by both parties showed that the worker was already experienced in his field and did not require training. The fact the worker was required to fill out an application for the position, received his assignments from the firm and the firm determined the worker's schedule according to their needs which demonstrated behavioral control by the firm. The worker was required to perform the services personally which showed the firm was interested in the methods used as well as being interested in the end result as an employer. It was the firm that had the financial investment as the firm provided the customers, the location, and the parts and tools the worker needed to perform his services. The firm was the party that could suffer a significant loss due to lack of payment by the customers since the firm was responsible to collect the amount they charged to the customers. The worker performed mechanical services for the firm's repair 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