

SS-8 Determination—Determination for Public Inspection

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| Occupation 03MIS.38 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 to produce and market dog food. The firm engaged the worker as a laborer. The worker's duties were to cook the dog food and assist with packaging the product to go to the firm's customers. There was no written agreement between the two parties. The firm accommodated the worker's schedule as she was a student at the time of service.

The worker received her assignments from the firm and the firm determined how the assignments should be performed. The firm accommodated her school schedule as she performed services part-time. The worker performed her services at the firm's location. The worker was required to perform the services personally. There was no written agreement between the two parties.

The firm provided the location, supplies and materials she needed to cook and package the finished product. The worker did not lease any space to perform the services. The worker only incurred commuting costs. The customers paid the firm directly. The worker was paid on an hourly basis. The worker could not suffer an economic loss in the performance of her duties.

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 terminated her services.

Analysis

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.

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. In the instant case the worker received her assignments from the firm and the firm determined how those assignments should be performed.

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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own.

The worker was an employee according to common law. The information provided by both parties showed the firm controlled the worker by giving her assignments and then determining how those assignments should be performed. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. The worker did not have a business presence in operating her own business and did not have a significant investment as being self-employed. The fact the worker was paid hourly which was set by the firm showed financial control over the worker's services. It was the firm that had the potential to suffer a significant loss since they provided the location, equipment and materials for the products to be made. The potential for a significant loss was also demonstrated the potential of a lack of payment from customers that paid the firm directly. The worker's services of cooking the dog food and packaging the finished products to send out to their firm's customers demonstrated 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