

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.39 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 in the business of operating a motor vehicle franchise dealership. The worker was engaged to provide shop janitorial services such as sweeping and mopping the floors along with emptying trash receptacles; the worker noted that his services also included those of an auto porter. He received a 2014 and 2015 Form 1099-MISC for his services. There was no written agreement.

The firm told the worker to sweep and mop the shop; he received his work assignments daily from the shop supervisors. Each party indicated that the other determined the methods by which the assignments were performed. But both agreed that the firm would be contacted if any problems or issues arose. There were no required reports to submit though the firm indicated an invoice was submitted (none provided with case.) The worker noted that he reported to work in the mornings, swept the shop, picked-up parts, again swept and mopped the shop as well as the surrounding areas throughout the day. Both parties agreed that the worker worked at the firm's location. Only the firm mentioned safety meetings to attend. Both also agreed that the firm would hire and pay any substitutes or help needed.

Both the firm and the worker agreed that the firm provided all supplies and materials needed by the worker. He was paid an hourly rate and had no other economic risk. The firm again referred to an invoice. Each indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits though the worker mentioned paid holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker quit.

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. 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. The firm provided the worker with instructions and his assigned duties. He performed his services according to the firm's scheduled work hours and days based on when he was needed. 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. The worker provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

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 was no written agreement. The worker provided various labor services at the firm's auto dealership. He was not engaged in an independent business venture when working for the firm but instead, his services were part of the necessary activities of the firm's 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.