

SS-8 Determination—Determination for Public Inspection

Occupation

03MIS.42 MiscLaborServices

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The worker initiated the request for a determination of his work status as a quality control worker in tax year 2014. The firm's business is described as glass screens for cell phones and iPads.

The firm's response was signed by the human resource manager. The worker completed an application for the job. The firm's business was not described nor were the services performed by the worker. The firm provided the following: the job assignments came from the firm/manager; the firm/manager determined the methods by which the services were performed; the worker's daily routine was cleaning glass at the warehouse; the worker was not required to perform the services personally; and, HR hired any additional personnel and they were paid by payroll. A letter was attached indicating the worker was terminated. The firm provided copies of pay stubs which reflected hours worked, hourly rate, and overtime rate/pay. A copy of Form 1099-MISC reporting the workers earnings was also furnished.

The worker responded that he was given specific training and instructions from a supervisor. The firm provided the job assignments and it was the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered at the firm's factory – he signed in, put on a body suit, went to his work station, did his job, took pre-determined breaks, and signed out. The worker was required to perform the services personally.

The worker stated the firm provided cleaning supplies and body suit; the worker furnished nothing. The worker did not lease equipment and did not incur expenses in the performance of the job. The firm paid the worker an hourly wage; the customers paid the firm. The worker indicated that he was not at risk for a financial loss in this work relationship and that he did not establish the level of payment for services provided or products sold.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker acknowledged he was fired from the position.

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.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. T

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

We have considered the information provided by both parties and have applied the above law to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

CONCLUSION

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.