

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.47 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

Information provided indicates the firm is a property management company. The worker performed services as a Maintenance Property Inspector for tax years 2014 and 2015. The firm reported the income on Form 1099-MISC, as they felt he was an independent contractor. The firm stated he received work orders from the firm for repairs and other needed services at homes managed by the firm. He possessed his own tools to do so, with the exception of an [REDACTED] with inspection software. The firm indicated he was not obligated to perform any specific work assignment, and often refused work from time to time because it was outside of his scope of competence. The firm would assign that work to another vendor. He maintained his own insurance, and would refuse some jobs, stating he was not covered. Based on his fixed retainer, he alone was in charge of whether he made a profit or a loss. The firm indicated the worker was original a subcontractor for another vendor, when the firm realized they were giving him the work, they contracted directly with him, to include a fixed retainer of \$30,000.00 annually, paid on a biweekly basis, plus fuel reimbursement component. Instruction concerning the inspection software was given. Work assignments were dispatched from the firm’s maintenance department to several handyman vendors. The firm indicated the worker would generally contact the tenants to schedule the work. He would report back if the work was not done, and it would be reassigned. The worker set his own schedule. He drove his own vehicle. No meetings were scheduled. The firm stated they provided the [REDACTED] with software, ID badges, Tee shirt with firm logo, materials (firm had an account at [REDACTED] or he was reimbursed). The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The worker notified the firm he would no longer perform services.

The worker agreed he was given a set salary, paid expenses ID Badge (badge provided) and company uniforms. He submitted timesheets, expense reports, inspection reports and completed work orders. He was on call by default. All work was performed at the properties managed by the firm. He was required to attend monthly maintenance meetings. Failure to attend would result in termination. The worker did not perform similar services for others. He is given a company [REDACTED], [REDACTED], company e-mail address, company calendar, company ID, and direct deposit.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

ANALYSIS

The term “full-time” may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work.

Analysis

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. 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.

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. (The worker was guaranteed an annual salary.)

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. Worker was given a company credit card to purchase necessary supplies. Copy was provided.)

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.