

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.53 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 operating a dealership for [REDACTED] trucks. The firm engaged the worker to perform miscellaneous services. The worker was required to fill out an application for the position. There was no written agreement between the two parties.

The worker received no training on how to perform his services. The worker was given his assignments by the firm. The worker relied upon the firm to resolve problems and complaints. The worker was required to report to the firm if supplies were needed. The firm set the worker's daily schedule. The worker performed the majority of his services at the firm's location. The worker was required to perform the services personally.

The firm provided the location, equipment and supplies the worker needed to perform his services. The firm provided the worker with a vehicle if he needed one. The worker was paid on an hourly basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker stated he received personal days and bonuses and the firm stated there were no benefits to the worker. 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 his 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.

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 establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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.

The worker was an employee according to common law. The information provided by both parties showed the worker received his daily duties from the firm which demonstrated control by the firm. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. Setting the worker's daily schedule demonstrated control over the worker's services. The worker relied upon the firm to resolve problems and complaints which showed the worker had a dependency upon the firm as an employer. It was the firm that had the financial investment as the firm provided the location, equipment and supplies the worker needed to perform his services. The fact the worker cleaned the firm's shop, picked up parts for the firm, made bank deposits and mowed the lawn demonstrated the worker's services were integrated into the firm's daily operations in an employer-employee relationship.

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