

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.61 MiscLaborService	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 supplier of flexible packaging. The worker was engaged to perform services as a laborer, to provide warehousing services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC to report the monies received for his services as non-employee compensation.

The firm provided the worker with the training and instructions needed to perform the services. The firm requested the filling of orders to be prepared for shipment. Work methods were determined by the worker. Problems and complaints were reported to the firm for resolution purposes. The worker performed his services personally, at the firm's leased warehouse location. The worker was required to provide the firm with his daily hours worked, and incoming freight invoices.

The firm provided the warehouse, forklift, product, computers, telephone, and utilities needed to perform the services. There was no information provided to show that the worker provided any items needed to perform his services, or that he incurred work related expenses. The firm paid the worker on an hourly wage basis for his services. Customers paid the firm. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (paid holidays, Thanksgiving and Christmas checks) were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others while engaged by the firm. The work relationship was continuous and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools and supplies, and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business 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 worker's information, it is the SS-8 Program's opinion, that under common law principles, the worker would be found to be an employee for Federal employment tax purposes.