

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Repair/Maintenance Workers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is operating an apartment cleaning business and engaged the worker to perform cleaning services for the firm's business customers. The firm provided the worker with lists of vacated apartments needed to be cleaned and allowed the worker to select jobs as well as to work with the firm at customer locations. The firm provided the worker with the necessary information to perform the jobs. The firm assigned jobs weekly and determined the methods used to perform the services. The worker is required to contact the firm or firm designated individuals regarding problems or complaints for resolution. The firm required the worker to provide job completion reports. The worker performed the services personally at the apartment locations. The firm did not require the worker to perform the services personally and if the worker hired substitutes or helpers the worker paid them and was not reimbursed by the firm for the payment made to them.

The firm, firm's clients, and worker provided tools, equipment and supplies needed to perform the services. The worker did not lease equipment or space. The worker incurred expenses for small personal tools which were not reimbursed by the firm. The firm paid the worker a set amount per apartment cleaned and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment the customers paid for the cleaning services and agreed to the payment made to worker to perform cleaning services.

There were no written contracts only verbal agreements between the firm and worker. The firm provided no benefits. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker indicated no similar services were performed for others. Both indicated the worker did no advertising as a business to the public. The firm indicated the firm's customers knew that she used subcontractor when she could not do the work herself. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going significant business capital outlays with business risk an employer/employee relationship is evident. The firm, firm's clients, and worker provided items used to perform cleaning services. The worker incurred small tool expenses. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm paid the worker on a per job basis and the customers paid the firm. The firm determined the cost the customers paid and the amount agreed upon to pay the worker for performance of the services. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The fact that a worker may perform similar services for others would be an important factor to consider in an independent contractor relationship; however, this factor alone would not make the worker to be an independent contractor. Many workers work at more than one job at a time and may be employees in one or all of the working relationships depending on the autonomy of each one. The worker personally performed services for the firm's business operation as needed and available on a regular and continuous basis over several months under the firm's business name.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination 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 without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Based on the information provided by both firm and worker we have determined the worker to be an employee under common law.