

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 in the business of relocating and selling furniture as well as building materials. The worker was engaged as a laborer. She received a Form 1099-MISC for her services in 2017 and continued to work into 2018 as well. There was no written agreement or contract.

The worker had no construction experience and received on-the-job training; she received task by task instructions. The firm noted that instructions were for the end result and not the process. The firm did provide training when requested by worker. Both parties agreed that the worker received her work assignments verbally and in-person throughout the day. The firm determined the methods by which the assignments were performed. Both parties agreed that the firm would be contacted if any issues or problems arose. Only verbal reports were given by the worker. Both agreed that the worker worked the firm's set scheduled hours and days with scheduled breaks and lunch. If there was not enough work, her hours were less. Both agreed that the worker worked at the firm's warehouse and at their job sites. Both parties also agreed that the worker was required to personally provide the services with the firm hiring and paying any substitutes.

The firm provided shrink wrap, carts, hand trucks, safety equipment, the workshop, truck, and tools. The worker supplied some safety gear such as steel toed boots. The worker incurred expenses of work boots and work clothing as well as bus fare and a fee for OSHA certification. The worker mentioned that a non-profit employment agency helped with bus fare for the first two weeks and paid for OSHA certification. She was paid an hourly rate and had no other economic risk though the firm indicated that she had the risk of damaging equipment or materials. The customer paid the firm. The firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. However, the worker also mentioned that the firm had her provide services to another deconstruction company when the firm was slow. The firm billed that company for her services then paid the worker. The relationship has ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm required labor to provide salvage-type services and engaged the worker to supply that labor as needed for its operations. The worker had no similar previous work experience and required some instructions even if provided as on-the-job training. 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. The firm also demonstrated its control over the worker by paying her to perform services for another company when the firm deemed it necessary. The worker personally provided her labor on a continuous basis and not just on a one-time occurrence. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. The firm had the investment in the warehouse, equipment or materials. The worker simply received an hourly rate of pay and had no other economic risk other than the loss of her compensation as she had no significant investment. 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. 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.

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. There were no benefits; and there was no written agreement or contract. The worker was engaged to provide labor for the firm's operation. When doing so, the worker was not engaged in a separate business venture. 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 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 see Publication 4341 for guidance and instructions for firm compliance.