

SS-8 Determination—Determination for Public Inspection

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| Occupation 03PMW.11 Repair Maintenance Worker | 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 was a 30 unit apartment building maintained by their in-house staff and contracted outside vendors as necessary, but has now relocated to [REDACTED]. The worker provided her services to the firm as a repair and maintenance worker with duties such as; cleaning the halls, common areas and grounds, cleaned and prepped the apartments to move in ready, painting prep and basic maintenance, and received the Forms 1099-MISC in 2012 from [REDACTED] along with both its affiliates; [REDACTED], and [REDACTED] for these services.

The worker stated that the firms trained and instructed her to perform the required duties the job required. The firm explained that no specific training was given, but instructions were given to the worker including units to be cleaned, and the date needed. The worker received her assignments from the firms' supervisor as needed and both the worker and the firms' supervisor determined the methods by which the assignments were performed. The firm added that the worker received her assignments from a telephone call and the firms' on-site manager determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firms' on-site manager and the on-site manager was responsible for problem resolution. The workers daily routine varied dependent on the firms' inspections and move-ins, and whatever else the firms requested. She provided her services personally on the firms' premises. If additional help was required, the firms' property manager hired and compensated the helpers.

The firms provided all the necessary supplies and equipment the worker needed to provide her services such as; the vacuum, mop, bucket and trash bags. The firm reported that the worker supplied the cleaning supplies. The worker did not lease any equipment nor were any business expenses incurred in the performance of her services for the firms. She received an hourly wage for her services. The worker did not assume any financial risk in the relationship. The worker stated that the firms' property manager established the level of payment for the services the worker provided. The firm maintains that the level of payment for the services the worker provided were negotiated and agreed to by both parties.

The worker did not perform similar services to others during the same time period. She provided her services under the firms' business names. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the worker was fired and the firms' owner sold the properties in [REDACTED] and relocated to [REDACTED].

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of her services. 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 retained the right, if necessary to protect their business 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. s interest, to determine or change the methods used by the worker to perform her assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. However, 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. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered her services personally. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Her pay was based on an hourly rate. 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 could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.