

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.16 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 filed as a partnership and is an [REDACTED] company providing property preservation for their clients. The worker was engaged by the firm to provide cleaning services. The firm and worker entered into an end of service agreement.

The worker stated she was given on the job training by the firm's owner [REDACTED]. The worker received her assignments each day and the worker was expected to follow certain guidelines. The worker relied upon the firm to resolve problems and complaints. The worker was required to submit mileage sheets, timesheets and assignment sheets to the firm. The firm contacted the worker when they needed her to perform her services. The worker met at the firm's office and then would go to the location that was set by the firm. The worker was required to perform the services personally.

The firm provided the worker with a vehicle, cleaning supplies and equipment she needed to perform her services. The worker did not lease any space to perform their services. The worker paid the worker on a set price of \$10 for each refresh and \$40 for each initial cleaning. The customers paid the firm directly. The firm established the level of payment for the services provided. The worker could not suffer a significant loss in the performance of her services.

The worker received no benefits. 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 firm stated they represented the worker as an independent contractor and the worker stated they represented the worker as an employee of the firm. The firm discharged the worker.

The firm provided a copy of the end of services agreement. This agreement stated the she no longer performed services for the firm as an independent contractor and she was receiving her last amount owed to her by the firm on July 10, 2013. The worker was not eligible to receive any other compensation.

The worker stated she was required to sign this agreement to receive her last payment from the firm.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.

Analysis

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The worker was an employee according to common law. The information provided by both parties show the firm did control the worker by training the worker and giving the worker her assignments. The fact the worker was required to perform her services according the expected guidelines showed control over the worker. Control was also shown by the firm requiring the worker to submit reports and timesheets to them when she performed her services. The fact the worker was required to perform her services personally showed the firm was interested in the method used as well as being interested in the end result as an employer. The worker relied upon the firm to resolve problems and complaints as an employer. The firm provided the worker with a vehicle, cleaning supplies and equipment which demonstrated the worker did not have a financial investment in providing her services. Financial control by the firm was also demonstrated by the firm setting the worker's rate of pay. The worker performed cleaning services for the firm's property preservation company which showed the worker's services were integrated into the firm's daily operations. The fact the firm retained the right for the firm to discharge the worker showed control over the worker through the threat of dismissal.

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