

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.20 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 is a corporation in the business of automobile touch ups. The firm engaged the worker as an automobile painter. There was no written agreement between the two parties.

The worker did not receive training but the worker's services were inspected by the firm to make sure the services were up to their standards. The worker received his assignments from the firm. The firm stated the worker determined how the services should be performed and the worker stated the firm decided. The worker relied upon the firm to resolve problems and complaints. The worker was required to report to the firm verbally on how many vehicles were worked on. The firm stated the worker set his own schedule and the worker stated he began his services a 8:00 a.m. and worked until 6:00 p.m. Monday through Friday. The worker performed his services at the firm's location. The worker was required to perform the services personally.

The firm provided the location, materials and supplies the worker needed to perform his services. The worker provided his own personal hand tools. The worker did not lease any space to perform their services. The worker was paid on a commission basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker was represented as performing services for [REDACTED]. The firm discharged the worker from his services.

The firm provided a copy of a Subcontractor Agreement. This agreement stated the worker was an independent contractor, would be compensated on a commission basis, and taxes would not be withheld. The firm would issue the worker a 1099-MISC at year-end.

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.

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.

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.

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.

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. Control was shown by the firm giving the worker his assignments and inspecting them to make sure the services were up to the firm's standards. The fact the worker was required to perform his 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 ultimately relied upon the firm as an employer to resolve his problems and complaints. The firm had the financial investment since the firm provided the worker with a location, the jobs, materials and supplies, and the large equipment for the worker to perform his services. The fact the worker provided his own personal hand tools is a common practice in this industry and does not indicate the worker was self-employed. The fact the firm was responsible to collect the amount they charged to their customers demonstrated the firm was the party that could suffer a significant loss due to lack of payment by the customers. The worker's services as an automobile painter were integrated into the firm's business of providing automobile touchups to their customers. The firm retained the right to discharge the worker which showed control over the worker's services 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