

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.43 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 operates a cleaning service. The firm engaged the worker through [REDACTED] application process to perform cleaning services for the firm's business customers. The firm posted job available to perform and allowed the worker to choose jobs accordingly. The firm provided the worker with job details and required the worker to perform the services personally once committed at the firm's customer's job sites. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with job check sheets and invoices on jobs completed. The firm, firm's customers, and worker determined the methods used to perform the services. The firm required the worker to attend meetings. The worker was not prohibited for hiring helpers and would not be reimbursed if she paid any.

The firm provided jobs, data sheets, access to available jobs, and equipment, materials, and supplies per the worker. The worker provided transportation, equipment, and materials. The worker did not lease equipment. The worker 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 level of payment for the services paid by the customers. The worker's economic loss and financial risks were related to possible damage to tools, materials, and personal vehicle.

There were non-compete, non-disclosure and a covenant not to sue agreements between the firm and the worker. The worker did not perform similar services for the firm or advertise to the public as being engaged in a business. The firm did not know if the worker performed similar services for others or advertise as a business to the public. Both the firm and worker 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. When a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. In this case the firm engaged the worker through an advertisement and application process to perform services for the firm's customers. The firm posted available jobs and allowed the worker to choose jobs to perform. One committed the worker was required to perform the services personally. The worker was required to contact the firm regarding any problems or complaints for resolution. The worker was required to attend meetings. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. The firm, firm's customers and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm hired and paid substitutes or helpers as needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided some equipment, materials, and supplies and the worker provided some personal tools and materials. The worker did not incur any significant on-going business expenses. The firm did not reimburse any expenses. The firm paid the worker on a per job basis and the customers paid the firm. The firm determined the level of payment the customers paid for the services and products. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's customers. These facts evidence financial control by the firm over the services performed by the worker. The risk of possible damages to equipment and materials would not be considered control over profit and loss in a working relationship.

There were no contracts between the firm and worker. There were non-compete, non-disclosure and covenant not to sue agreements between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business customers under the firm's business name on a regular and continuous basis over several years. Both the firm and 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.