

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.47 RepairMaintenanceWkr	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 limited liability company filing as a corporation providing cleaning services to their clients. The firm engaged the worker to provide cleaning services. There was no written agreement between the two parties.

The worker was given the instruction of what services she was required to perform. The worker received her assignments from the firm. The worker was required to perform the assignments according to the firm's agreement with their client. The worker stated she relied upon her supervisor to resolve her problems and complaints and the firm stated the worker resolved her own problems and complaints. The worker was required to e-mail the firm on the services performed. The worker's schedule was determined by the firm's client's needs. The worker performed her services at the location of the client. The worker stated she was required to perform her services personally but the firm stated the worker was not required to perform her services personally.

The worker stated the firm provided all the supplies and equipment she needed to perform her services but the firm stated the worker provided her own supplies and equipment. The worker could not incur any expenses in the performance of her services. The worker was paid on a monthly basis. The worker was allowed advances that would not exceed 40% of her monthly income. The customer paid the firm directly for the services they received.

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 worker performed services under the firm's business name. The firm discharged the worker from 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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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

The worker was an employee according to common law. The information provided by both parties showed the firm did instruct the worker on what assignments to perform. The fact the worker had a supervisor demonstrated control by the firm over the worker's services. Control over the worker was also demonstrated by the firm requiring the worker to fulfill the agreement they had with their customer. The firm did provide the equipment and supplies the worker needed to perform her services and the worker could not suffer a significant loss as being self-employed as the worker was paid on a monthly basis. The fact the worker would lose income for a sick day showed the firm retained financial control over the worker as an employee. The fact the firm discharged the worker at will showed control over the worker through the threat of dismissal. The fact the worker performed services under the firm's business name showed the worker's services were integrated into the firm daily operations.

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