

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.49 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 in the business of auto repairs. The worker was engaged by the firm to perform miscellaneous cleaning tasks and other duties as needed. The firm reported the worker's remuneration on Form 1099-MISC for 2013.

Information from the parties supports that the firm provided the worker with his work assignments. His schedule was determined by his availability and the firm's needs. If problems or complaints occurred, the worker contacted the firm for resolution. He reported the number of hours he worked to the firm. The worker performed his services on the firm's premises. He was required to perform his services personally.

The firm stated that it provided the worker with coveralls; the worker was responsible for cleaning them. At times, the worker used his own car to pick up customers, thus incurring fuel expenses. The firm paid the worker at an hourly rate. It did not cover him under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The firm did not prohibit the worker from providing similar services for others during the same time period. The worker did not advertise his services. He provided his services under the firm's name. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm stated it did not train or instruct the worker, it was responsible for resolving any problems or complaints that may have occurred, showing the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed were part of the service recipient's regular business activities. In this case, the worker performed under the firm's name. The worker was not engaged in an independent enterprise, but rather the cleaning and other services performed by the worker were a necessary and integral part of the firm's auto repair 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. The worker could have provided similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. 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. These facts show that the firm retained control over the work relationship and services of the worker.

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.