

**SS-8 Determination—Determination for Public Inspection**

Occupation 03PMW.54 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**

Information provided indicated the firm rents mats to the entertainment industry to protect home and business locations for filming TV commercial and movies. They also clean the location after the mats are removed. The worker performed services as a cleaner. She went to the filming location and cleaned floors, windows, walls, stairs, etc. She also cleaned the rental mats at their warehouse. She was brought on as they tried the new division. It started as an occasional job, she got more hours as the business grew. The firm stated they offered her full time employment which she decline in December of 2014 stating she had a competing business. The firm stated from June through September 2013 they hired her business [REDACTED] and [REDACTED] to clean their home and office. They then hired her business to work for the firm in the venture. Work assignments were given via text or phone call. She would report to the manager on site if there were any issues. The firm indicated there was no set schedule. They would text her when there was a job, the information and location. She would go and clean. She wanted more work so they gave her the code to their warehouse and she would go and clean mats when she wanted. She often worked nights. She was to perform her services personally. She requested her daughter assist her. The firm approved the daughter to help. The firm paid the daughter. The firm indicated they provided the vacuum and cleaning supplies. The worker also used her own cleaning supplies. The worker was paid by the hour and piece work. The worker would report the total due; she was in charge of her own calculations. They paid whatever amount she said she was owed, it was an honor system. The firm stated the clients paid the firm. The firm did carry workmen's compensation insurance. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She had her own cleaning business, then they got busy and she worked for them more. When they slowed down she took on her clients again. She has a business card, copy provided, with her own company name on them. The firm stated they gave her a T-shirt with their company name, but she did not have to wear it.

The worker stated that the firm instructed her on the location and time of jobs. The worker agreed her work assignments came from the firm via text, phone or e-mail. She reported to the firm if there were any issues. She stated she reported her daily hours and what work was performed. She agreed the schedule varied depending on the filming schedule and location of the job. If there were no jobs she cleaned mats at the firm's shop. She was required to perform her services personally. The firm provided all equipment and supplies. The worker indicated she was paid by the hour, with fuel money paid on occasion. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker stated everyone received a text message that stated if anyone got caught working for specific other companies, they would be fired. The worker stated she handed out the firm's [REDACTED] business cards. A copy of the company shirts and business cards were provided. She indicated she was represented as an employee.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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 establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. See Rev. Rul. 56-694, 1956-2 C.B. 694.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. 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.

## ANALYSIS

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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. The services appeared to have been directed and controlled at all times by the firm. Although the firm stated the worker had her own cleaning business and provided a copy of her business card, no other evidence of that business can be found. All services were performed as directed, under the firm's business name, not that of the worker. The worker was paid by the hour, and provided all equipment and supplies. Both firm and worker agreed the firm's clients paid the firm for the services performed.