

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.59 RepairMaintenanceWorker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is operating a dental office. The worker was engaged as front desk staff and as an office cleaner. The worker received a Form W-2 for her 2011 to 2014 services as a member of the office staff and as an employee. The firm indicated that if the owner was out of the country or if the payroll company was unavailable to provide its services, the worker's compensation for those services, sometimes involving commission, were not processed as wages and were reflected on Form 1099-MISC at the end of the year. However, that compensation would still be wages and reportable on Form W-2 along with the appropriate withholdings.

This case will address the worker's compensation received for her cleaning services which were also reported on the Form 1099-MISC for the years of 2012 through 2014. There were no written agreements. The information provided by both the firm and the worker supported the worker's services as an employee when performing her services as a member of the office staff.

The worker cleaned the firm's dental office once a week on Sundays. She had no set scheduled hours. The firm provided the cleaning equipment, tools and supplies. For these weekly services, the worker received a set monthly amount. There was no written agreement.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, 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 firm utilized the worker during her non-scheduled work hours to clean. It provided her with general cleaning instructions and tasks, even if just initially. She performed her services according to the firm's requirements (specifically, not during its regular business hours)> The firm had the ability to redirect the worker's services to meet its operational needs. In addition, the worker provided her services personally on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. The firm provided all the items needed by the worker to provide her cleaning services. She received a set monthly amount for her one-day a week services. 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.

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. There were no benefits and there was no written agreement regarding the cleaning work relationship. The worker was an office worker at the firm's dental practice with the firm also engaging her to provide weekly 'after-hours' cleaning services. She was not engaged in an independent business venture. She did not maintain an office, advertise or hold herself out to the public to provide similar services for others.

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.