

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.60 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 providing house cleaning services. The worker was engaged as a house cleaner. She received a 2014 1099-MISC for her services. There was no written agreement other than a non-compete as well as a standard procedures document signed by the worker.

The worker indicated that she trained for one day with a co-worker; the firm noted that the worker was provided with a walk-through of clients' homes. The worker noted that she received her work assignments via a monthly schedule; the firm noted assignments were given via email or work order. Each indicated that the other determined the methods by which the assignments were performed but both agreed that the firm would be contacted to resolve any complaints or issues that arose. Only the worker noted that she submitted a daily report and gas/mileage records. The worker noted that her routine consisted of getting the keys, loading the vehicle, going to the client's home, and at end of day, bringing back equipment, money, and keys plus a report. The firm indicated that the worker was asked if she wanted the job; then the worker was scheduled. The worker would pick up the work order or receive an email with an address and information. The worker provided her services at customers' locations, one to six hours each, as well as at the firm's office. There were no meetings. Both parties agreed that the worker was to provide the services personally and that the firm would be responsible for hiring and paying any substitute workers.

The worker indicated that the firm provided all cleaning supplies, vacuum, chemicals, mop, rags, and a vehicle if working. The firm noted that it provided only the cleaning supplies and that the worker provided equipment/tools. The worker incurred gas expenses between clients' homes, paper, ink, and her time for making employee books. She was not reimbursed by the firm. The worker noted that she was paid by the hour plus tips; the firm noted by the job. The customer paid the firm. Only the worker noted that there could be risk of damages to home or equipment. The firm stated that the level of payment for services was negotiated with the worker.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others during the same time period; the firm disagreed. The firm indicated that there was a non-compete agreement and that the worker performed services under the firm's name. The relationship had ended.

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 provided the worker with instructions and her assigned duties. Once the worker accepted any job assignment, she was to adhere to the firm's standard procedures that addressed behavior, work schedules, and reporting back to the firm at the end of the day. Only the firm would schedule the cleaning jobs with the customer. 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. The fact that the worker may have had prior experience in this line of work, and therefore, was familiar with various aspects did not by itself indicate that the worker was self-employed during the time she provided services for the firm. As the firm remained responsible to its customers, it was understandable and reasonable that the worker was to provide the services personally. 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, again illustrating the firm's control over the worker's activities, supporting an employer-employee relationship.

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 worker simply received an hourly rate of pay for her time on each cleaning job undertaken and had no other economic risk. 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. The worker was a house cleaner for the firm's house cleaning business. While the worker may have been involved in a previous business venture, when she was engaged by the firm, she was no longer operating an independent enterprise. Her services became part of the necessary activities of the firm's operations. 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 firm indicated that the worker did not want to be an employee. However, in *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B.174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 firm should seek correction guidance in Publication 4341 available at www.irs.gov.