

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.61 RepairMaintenanceWorker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a machine shop that builds motors and does fabrication services. The firm engaged the worker to disassemble and clean parts and do preventive maintenance work for the firm's business operation. The firm stated they provided no training and did not assign the worker jobs to perform. The worker stated the firm told him what to do and showed him how to do the jobs. The worker contacted the firm regarding any problems or complaints for resolution. The worker performed the services during the firm's business hours at the firm's place of business on a flexible scheduled basis. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a commission basis and guaranteed the worker \$20 a day for a day's work. The customers paid the firm for the services and products sold. The firm determined the level of payment for the services and products. The firm did not carry workers' compensation insurance. The worker's economic loss and financial risks were related to possible damages of equipment.

There were no contracts between the firm and the worker. The worker did not perform similar services for others. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker on a flexible schedule basis to perform disassembly of motors, parts cleaning, and maintenance services for the firm's business operation. The firm assigned the worker services to perform based on the firm's business needs and determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The worker contacted the firm regarding any problems or complaints for resolution. The worker performed the services personally at the firm's place of business during the firm's business hours of operation. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a commission basis and guaranteed a set amount per day for a day's work. The customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss. The risk of damages occurring while performing services is also not considered control over profit and loss and no legal documentation was provided showing this to be a legal liability of the worker in performance of the services.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous part-time flexible schedule basis under the firm's business name over several months. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.