

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.62 RepairMaintenanceWorker	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 business to subcontract maintenance work for management companies. The firm engaged the worker to perform services as a laborer, whose duties included property maintenance and painting, wood repair, and drywall work. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end, reporting the monies received for his services as non-employee compensation.

The firm provided the worker with daily work orders, and instructions on what needed to be done, what supplies to pick up or purchase at suppliers, and when to be at job locations. The firm and worker both determined the work methods by which to perform the services, and the firm resolved issues. The worker was required to perform his services personally. The worker was required to provide the firm with completed work orders, describing what services were performed each day, and to turn in receipts if the worker purchased any supplies.

The firm provided the worker with maintenance supplies (paint, nails, drywall mud, and ladders), and company work van needed to perform the services. The worker provided his own personal power equipment, and tools (saws, brushes, drywall tools, and painting tools). The worker incurred expenses for his own power equipment, and upkeep of his personal tools. The firm paid the worker on an hourly wage basis, and piecework basis, as established by the firm. Customers made payment to the firm for services rendered. The worker did not incur economic loss or financial risk with regard to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (personal days, bonuses) were made available to the worker. There was no information provided for this case to evidence that the worker performed similar services for others while engaged by the firm, or that he was prohibited from doing so. There was no information provided in this case to evidence that the worker advertised as being in business to perform similar services for others. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools, and supplies, as well as his own, and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov