

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

Occupation

03PMW.75 RepairMaintenanceWorker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in the business of providing cleaning services. The worker was engaged to provide the labor needed as a cleaner. She received a 2014 1099-MISC for her services; she also continued to provide cleaning services into 2015 as well. There was no written agreement.

The worker noted that she received verbal instructions from the firm on the way to the job. The firm, however, noted that the worker cleaned the way she saw fit. Sometimes all the workers would clean and travel together; sometimes by themselves. Each party indicated that the other determined the methods by which the assignments were performed. The worker noted that she contacted the firm if any issues arose; the firm indicated that all workers would resolve any problems. There were no reports. The firm noted that the worker's schedule varied depending on the jobs; the worker noted that she would arrive at the firm's house at a pre-determined time, load the company vehicle with supplies and tools, travel to jobs, and return at the end of the day – work hours did vary. Both parties agreed that all the worker's services were performed at the customers' locations. There were no meetings. Only the worker noted that she was required to provide the services personally with the firm hiring and paying other workers.

Both the firm and the worker agreed that the firm provided all cleaning supplies, equipment, and tools; the worker added the company vehicle also. The firm noted that the worker provided some supplies and tools; another party (customer) also provided supplies, tools, and equipment. The worker incurred expenses for her cell phone, gas, and vehicle maintenance as well as for her work attire. The firm also noted that the worker incurred expenses for cleaning supplies she chose to bring. The firm provided no reimbursements. Both parties agreed that the worker was paid an hourly rate (each week) and had no other economic risk; the firm noted that the worker received bonuses from clients. The (firm's) customers paid the firm. The firm established the level of payment for services, according to the worker. The firm mentioned the worker working for her own customers.

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 though the firm disagreed. The firm noted that all (workers) were equal partners, contractors, as well as coworkers. The relationship had ended.

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## Analysis

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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 obtained the clientele and cleaning jobs; then provided the worker with the job instructions and her assigned duties. She performed her services according to the firm's scheduled work hours and days as the worker was usually provided with transportation to the job sites. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker provided her services 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 worker simply received an hourly rate of pay 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. There were no benefits and there was no written agreement. The worker was a cleaner for the firm's home and business cleaning operation. When working for the firm, the worker was not engaged in an independent enterprise. Instead her services were part of the necessary activities of the firm's business. 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.

While the firm expressed that she and the worker were coworkers and/or partners in the operation, the worker did not appear to have any ownership interest in the firm. The worker provided her labor to the firm for the cleaning jobs it obtained, and received a Form 1099-MISC as a pay document for her services. While the firm also indicated that the worker provided similar services for others during the same time period, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them.

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.