

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.76 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 the business of operating a car wash. The worker was engaged to wash/dry cars and provide cashier services. He received a 2014 Form 1099-MISC for his services. There was no written agreement.

Both the firm and the worker agreed that the worker received no specific training. The worker noted he received his work assignments by phone or in-person when he reported to the car wash. The firm noted his work assignments occurred when a car showed up. Both parties agreed that the firm's supervisors/owners determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. There were no required reports. The worker's routine entailed arriving at the firm's location, unlocking the doors, filling the tubs with soap and water, putting out cones, collecting money, washing/drying cars, filling out time cards, closing and locking the doors. The firm noted that the worker worked a few hours a day, part-time, at the firm's location. The worker noted that he worked at three different locations for the owners; he would be told where to work and when. There were no formal meetings. Both parties agreed that the worker was required to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided the facility, water, soap, towels, and electricity. The worker noted that he provided rubber boots or shoes. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The firm established the level of payment for services.

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; the firm did not know. The relationship has 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. 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 his assigned duties. He performed his services at the car wash location designated by the firm as well as according to the firm's scheduled work hours and days. The worker may have worked only part-time and worked hours when he was available; however, it would be unreasonable to believe that the worker could come and go as he pleased when an attendant at the firm's car wash. 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.

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 provided cashier and car wash services at the firm's place of business. He was not engaged in an independent enterprise, but rather his services were part of the necessary and essential 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.

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.