

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.77 RepairMaintenanceWorker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in the plumbing business and the worker performed sewer repairs for the firm's business operation. The worker was engaged by the firm through a verbal referral. The firm provided no formal training. The firm called the worker as jobs became available to verify if the worker would be available to perform services or not. The firm and the worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints for resolution and the worker resolved them. The firm did not require the worker to provide any job reports. The worker performed the services during variable scheduled hours based on job assignments. The worker performed the services at the firm's customers job sites. The firm did not require the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed per the worker. The firm indicated both the firm and worker hired substitutes or helpers. The worker did not need the firm's prior approval to hire substitutes or helpers and would not be reimbursed if the worker paid any per the firm.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services. The worker provided safety items and personal tools. The worker did not lease equipment or space. The worker incurred personal item expenses. Per the firm no expenses were reimbursed and the worker indicated being reimbursed for motel fees and gas when working out of town. The firm paid the worker an hourly wage. The customers paid the firm and worker. If the customers paid the worker the entire amount was required to be turned over to the firm. The firm did not carry workers' compensation insurance. The firm and worker disagreed on whom determined the level of payment for the services. The firm indicated the worker's economic loss and financial risk as loss or damage to equipment or materials. The worker indicated not having any economic loss or financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others while performing services for the firm. The firm provided social media posted information regarding the worker's business advertising. The firm represented the worker as an independent contractor providing services under the firm's business name to the customers. Both the firm and the worker 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, who had experience, to perform services for the firm's business operation. No formal training was provided by the firm due to the worker's experience. The firm called the worker as jobs became available to verify if the worker was able to perform services. The firm and the worker determined the methods used 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 and then the worker resolved them accordingly. The worker performed services on a variable scheduled basis at the firm's customers locations. The worker performed the services personally. The firm hired and paid substitutes or helpers as needed. There was no documentation provided showing the worker engaged any substitutes or helpers and paid any. 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 provided personal safety items, tools, and transportation. The worker did not lease equipment. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage and the customers paid the firm directly or indirectly through the worker. If the customers paid the worker the entire amount would be required to be turned over to the firm. The firm determined the level of payment the customers paid for the services and the firm and worker determined the level of payment paid to the worker for performing services. The firm indicated the worker's economic loss and financial risk were related to loss or damages to equipment or materials. The worker stated he could not suffer any economic loss and had no financial risk. These facts evidence financial control by the firm over the services performed by the worker. The risk of possible loss or damages to equipment or materials would not be considered having control over profit and loss in a working relationship. There were no legal documents provided showing this to be a risk of the worker.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others while performing services for the firm and provided social media posted information regarding the worker's business. The worker did not need the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker indicated the posted business was never actively engaged and no documentation was provided indicating the worker performed services for the firm under the posted business entity. The firm referred to the worker as an independent contractor who performed services under the firm's business name to the customers. The firm paid the worker under his name and personal identification number not the advertised business.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.