

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.80 RepairMaintenanceWkr

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in the rental of apartments and properties business. The firm engaged the worker through a referral and application process to perform property maintenance services. The firm provided the worker with job instructions and assignments on work orders. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm or firm's designated assistant regarding any problems or complaints for resolution. The firm required the worker to provide the firm with detailed invoices on work performed. The worker performed the services during schedules as requested by the firm or as needed. The firm performed the services at the firm's premises and his shop. The firm did not require the worker to perform the services personally. The firm's prior approval was not required for the worker to hire substitutes or helpers and the firm would not reimburse the worker if he paid any.

The firm did not know what they provided and indicated the worker provided personal tools, equipment, and materials. The worker indicated the firm provided paint, all pool, maintenance, and cleaning supplies. The worker did not lease equipment or space. The worker incurred expenses for personal items and some chemicals per the firm and did not know what if any expenses were reimbursed. The worker indicated no gas was reimbursed. The firm paid the worker per invoice and the firm was paid through the firm's customers. The firm did not carry workers' compensation insurance. The firm did not know who established the level of payment for the services. The worker indicated the firm determined this issue. The firm did not know what economic loss and financial risk the worker could incur and the worker indicated loss or damage of personal tools and equipment.

The firm provided a signed independent contractor agreement dated May 1, 2014 and a notarized affidavit address to the [REDACTED], [REDACTED] indicating worker to have been and continued to be an independent contractor under a d/b/a signed August 20, 2015. The firm did not know if the worker performed similar services for others and was not required to obtain the firm's approval to do so. The worker indicated no similar services were performed for others while performing services for the firm. The firm did not know if the worker advertised as a business to the public and the worker indicated no to advertising as a business. The firm did not know how the worker was represented to the customers and worker indicated employee under the firm's business name. The firm did not know if the work relationship had ended. 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 through a referral and application process to perform maintenance, repair, and other services for the firm's property. The firm and firm's designated assistant assigned the worker services to perform through work orders and as needed. The firm, firm's assistant, and worker 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 firm required the worker to contact the firm or firm's assistant regarding any problems or complaints for resolution. The firm required the worker to submit detailed job invoices for services performed. The firm required the worker to perform the services at the firm's premises and his shop as needed. The firm did not require the worker to perform the services personally or obtain the firm's prior approval to hire and pay substitutes or helpers and would not reimburse any payments to them per the firm. The worker indicated not applicable to hiring and paying substitutes or helpers. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided paint, all pool, maintenance, and cleaning supplies. The worker provided personal tools, equipment, and materials. The worker did not lease equipment or space. The worker incurred personal and some supply expenses. The firm reimbursed business supply expenses. The firm paid the worker per invoice submitted and the firm was paid through the customers. The firm and worker determined the level of payment for the services. The worker could not suffer an economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker. The risk of loss or damages to personal tools and equipment would not be considered having control over profit and loss in a working relationship.

There was a signed independent contractor agreement entered into indicating the aspects of various work relationship issues and subsequent affidavit indicating the worker to be in a business. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for the firm. The firm did not prohibit the worker from doing 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 did no advertising to the public as being engaged in a business operation. The worker personally performed services for the firm's business on a regular and continuous basis over several months at the firm's place of business under the firm's business name and was paid under the worker's social security number and name. The worker's business was not established and registered with the state until August of 2015 and none of the invoices provided indicated worker's d/b/a.

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.