

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.84 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 event cleaning and services business. The firm engaged the worker a prior employee to perform event cleaning services for the firm's business as needed and available. The worker previously performed office manager and event supervision services as an employee for the firm. The firm offered the worker jobs on projects and allowed the worker to accept or decline jobs. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker provided the firm with invoices on jobs performed for payment purposes. The worker performed the services from home and event locations. The firm did not require the worker to perform the services personally. The firm's approval was not required for the worker to hire substitutes or helpers.

The firm provided job opportunities. The worker did not lease equipment or space. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The firm carried workers' compensation insurance, The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's approval. There were no non-compete agreements between the firm and worker. The worker did no advertising as a business to the public. 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 to perform event cleanup services as needed and contacted the worker regarding the specifics of the jobs available if the worker wanted to perform the services. If the worker accepted the jobs the worker and firm determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to submit invoices for jobs performed for payment purposes. The workers routines varied based on accepted jobs. The worker performed the services out of his home and at job sites. The firm did not require the worker to perform the services personally nor to obtain the firm's approval to hire substitutes or helpers if needed. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the job opportunities. The firm paid the worker an hourly wage. The customers paid the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the services and agreed with the worker on the hourly wage. The worker could not suffer any 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.

There were no contracts or non-compete agreements between the firm and the worker. The worker did perform similar services for others while performing services for the firm and 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 firm indicated the worker did no advertising as a business to the public. The worker personally performed services for the firm's business operation at the firm's customers job sites on an as needed and available basis over several months under the firm's business name.

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.