

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.85 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 a corporation providing vehicle auto body and painting services to their customers. The firm engaged the worker as an automobile detailer and transporter. The worker filled out an application for the position. There was no written contract between the two parties.

The firm stated the worker had previous experience and did not need any training and the worker stated another co-worker showed him any duty he did not already know how to do. The worker's assignments were posted on a board or the worker would consult the shop manager. The firm determined the method of how the services should be performed. The worker relied upon the firm to resolve problems and complaints. The worker was required to inform the firm when a job was completed. The worker performed his services at the firm's place of business and also transported cars as needed by the firm. The worker was required to perform the services personally. The firm hired and paid any additional helpers or substitutes as needed.

The firm provided all of the supplies and materials the worker needed to perform his services. The worker did not lease any space to perform the services. The worker was paid on an hourly basis. The customers paid the firm directly. The worker did not establish the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm stated once the worker has completed his services the vehicle would then go to another worker for the next process in fulfilling their agreement with their customer. The worker stated he was represented as a detailer performing services under the firm's business name. The worker stated he was laid off and the firm stated the relationship ended as the job was completed.

Analysis

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.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm.

The worker was an employee according to common law. The information provided by both parties show the worker was already trained in his profession but the worker was required to perform specific services according to the firm's instructions which showed control over the worker's services. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as the end result as an employer. The firm had the financial investment as the firm provided the location, large equipment, and materials for the worker to perform his services. The worker showed no financial investment in operating his own business. The firm paid the worker by the hour which showed financial control over the worker's services. The fact the worker performed services under the firm's business name showed the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989