

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.89 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 repairing trucks at the customers' locations. The worker was a mechanic's helper who repaired trucks under a lead mechanic as well as cut grass, worked in the warehouse, and ran errands picking up parts. He received a 2014 1099-MISC for his services; he continued to provide services in 2015 as well. There was no written agreement.

The worker received on-the-job training as a mechanic's helper; he only had to provide his own tools. The firm indicated that no training or instructions were provided. Both parties agreed that the firm gave the worker his daily job assignments. Both also agreed that the firm determined the methods by which the assignments were performed. The worker noted that he would contact the firm if any problems or issues arose; the firm noted that the worker would contact who he was doing the job for. Both parties agreed that the worker would submit a report on what he did for the day. According to the firm, there was no routine, just an occasional job. The worker noted that he usually started in the morning and ended by early evening. Both agreed that the worker performed his services at the firm's customers' locations and/or where directed. Only the worker mentioned daily meetings. The firm noted that the worker was required to provide the services personally. The worker noted that only the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the worker provided his own tools. The worker noted that he received a set amount weekly; the firm noted that he was paid by the job. The worker had no other economic risk. The customer paid the firm. The firm established the level of payment for services.

Both 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 relationship ended when the worker's services were terminated.

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. 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.

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 indicated that it did not provide the worker with any training or instructions. The firm did, however, assign the worker his daily tasks. As the worker provided a variety of services, it would be reasonable to assume that he was given some instructions, even if minimal. He performed those services according to the firm's directions involving what he was to do, when to work, where he was to work and how it needed to be done. The worker worked as needed and when called in - essentially part-time. The worker was to provide the services personally and report his activities to the firm. 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 was paid a set amount for his services and had no other economic risk. 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. The worker provided his own tools and although there was a discrepancy on how he was paid, he had no other economic risk other than the loss of that pay. The worker had no investment on which to incur a profit or a loss. He was given the money to purchase any parts that he was told to buy, showing the dependency of the worker on the firm.

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 was engaged as a helper whether he mowed lawns, assisted in repairs or picked up parts. These services were not an indication of a separate business venture. Instead, these services were necessary 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.

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 see Publication 4341 for guidance and instructions for firm compliance.