

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.90 RepairMaintenanceWorker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a cleaning service business operation. The firm engaged the worker to perform cleaning services for the firm's customers. The firm indicated no training was provided and the worker stated being trained on the firm's company standards and techniques. The firm contacted the worker regarding services requested by customers to perform and allowed the worker to accept or decline job offers. The firm provided job instructions on services needed to be performed for the firm's customers once the worker accepted jobs. The firm, firm's customers, 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 firm assigned the worker hours to perform the services and allowed the worker to perform the services on a flexible schedule during the assigned hours. The worker performed the services at the firm's customers locations. The firm indicated the worker was not required to perform the services personally or obtain the firm's prior approval to hire substitutes or helpers and the worker would pay them and not be reimbursed for the payment. The worker indicated the firm required the worker to perform the services personally, the firm's prior approval was required for worker to hire substitutes or helpers and the firm paid them.

The firm or firm's customers provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker incurred fuel expenses. The firm reimbursed all business expenses and fuel expenses incurred by the worker to perform the services. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There was a signed working agreement between the firm, firm's spouse and the worker indicating the worker to be an employee. The worker did perform similar services for the firm's spouses' business during the working relationship and was not required to obtain the firm's prior approval to do so. The working relationship agreement prohibited the worker from performing similar services for the firm's customers, other businesses, or on her own during the work relationship and for one year after termination. The worker did no advertising as a business to the public. The firm referred to the worker by name as an employee 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 to perform cleaning services for the firm's customers on a flexible scheduled basis. When a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. The firm provided the worker with initial business practices and procedures training and job instructions on services needed to be performed for the firm's customers once the worker agreed to perform the services. The firm allowed the worker to accept or decline job offers. The firm allowed the worker to perform services on a flexible schedule basis during designated hours determined by the firm and firm's customers. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm, firm's customers, 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 personally performed services at the firm's customers locations. The firm provided and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm or firm's customers provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided a personal vehicle. The worker did not lease equipment or incur any business expenses. The firm reimbursed all business expenses and provided the worker with a gas allowance per week. 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 worker could not suffer any economic loss and had no financial risk 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 was a signed working relationship agreement provided signed by the firm, firm's spouse and worker indicating the worker to be an employee and addressing non-compete, non-solicitation and other issues during the working relationship and after termination. The worker did perform similar services for others and was not required to obtain the firm's prior approval. 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. The worker personally performed services for the firm's business under the firm's business name at the firm's customers job locations on a regular and continuous as needed and agreed part-time basis over several months. The firm referred to the worker by name working 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. 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.