

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.97 RepairMaintenanceWkr	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 truck and machinery repair and service business operation. The firm engaged the worker to provide repair services for the firm's business operation. The firm provided the worker with the necessary training and instructions needed to perform the services. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to complete and provide firm work reports on services performed. The firm determined the work hours. The firm required the worker to perform the services personally at the firm's customers locations. The firm hired and paid substitutes or helpers if needed.

The firm provided the business, truck, and tools. The worker did not provide anything other than personal clothing. The worker did not lease anything or incur any business expenses. The firm paid the worker and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and products sold. The firm indicated the worker's economic loss and financial risk were related to possible loss or damage to truck or equipment. The worker indicated unknown of any economic loss and financial risk he could incur.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm referred to the worker as an employee of the firm's business to the customers. The firm paid the worker as both an independent contractor and an employee during the working relationship and neither party indicated any changes were made to the working relationship. Both the firm and 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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The risk of incurring liability for damages or loss in a working relationship would not be considered having control over business profit and loss. There were no legal documents provided that indicated this was a liability of the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The firm paid the worker and the customers paid the firm. The firm had control over the costs of the products sold and the services being performed. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business on a regular and continuous as needed basis over several months under the firm's business name. The firm referred to the worker as an employee to the customers. The firm paid the worker as both an independent contractor and an employee during the working relationship and the services remained substantially the same. The issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

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.