

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.99 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 provides janitorial services. As the owner of the firm, you engaged the worker as a janitor. You reported the worker's remuneration on Forms 1099-MISC for 2014 and 2015.

Information from the parties supports that you relied upon the worker's prior training and experience to perform her services. The worker worked under a supervisor. She followed the schedule that you set. The worker performed her services at your customer's location. You stated that the worker was not required to perform her services personally.

You provided the brooms and mops. The worker provided cleaning supplies. You paid the worker on a salary basis. You did not cover her under workers' compensation. Customers paid your firm directly at prices that you established. Neither party indicated an investment by the worker in your firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker provided similar services for others during the same time period. There is no evidence submitted that the worker advertised her services or maintained a business listing.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while you relied upon the worker's prior training and experience to perform her services, the worker worked under a supervisor, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customer's satisfaction with the work. The worker followed the schedule that you set. She performed her services on your customer's premises. 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. There is no evidence submitted that the worker engaged and paid others to perform services for you on her behalf. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. You paid the worker on a salary basis. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She performed her services under your firm's name, enabling you to fulfill your contract with your customer. The worker was not engaged in an independent enterprise, but rather the cleaning services performed by the worker were a necessary and integral part of your janitorial business. 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. The worker performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although you did not provide benefits to the worker, neither party incurred a liability when the work relationship terminated, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.