

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.101 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 in the business of manufacturing high performance engines. The worker was engaged to maintain, clean, and paint floors in the firm's building when work was slow. He had indicated that he knew the engine business and was offered other tasks/work by the firm in between work on the floors. The worker received a 2014 and 2015 Form 1099-MISC for his services. There was no written agreement addressing any part of the work relationship.

The worker was initially engaged to paint/waterproof the firm's floor as he had experience in that line of work. The firm noted that it provided no training or instructions. The worker continued to provide other services for the firm; he would be told what parts to clean and/or other tasks for the day by the firm. Both parties agreed that the shop foreman determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. There were no required reports. The firm noted that the worker scheduled his own hours but could only work when the firm was open; he was asked to let them know when he was not coming in. The worker noted that he worked weekdays during set scheduled hours and sometimes on Saturdays as well. Both parties agreed that the worker worked at the firm's location. Both also agreed that the worker was to provide the services personally with only the firm hiring and paying any substitute workers.

The firm noted that the worker had some of his own supplies, tools and rental equipment whereas the worker noted that the firm provided all essential tools and materials. The worker did rent equipment as noted by firm; however, the firm effectively paid for the rental equipment as the firm reimbursed the worker for all needed supplies and tools for the work on the firm's floors. The worker noted that the firm also paid him for gas when he picked-up parts. Both parties agreed that the worker was paid an hourly rate for all of his services and had no other economic risk. The customer paid the firm. Each party indicated that the other established the level of payment for services

According to the firm, there were no benefits. Both parties agreed that either party could terminate the relationship without incurring a liability and that 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 worker was engaged to prep, clean, and paint floors based on his prior experience. He then continued to provide services for the firm not directly related to this activity. The firm provided the worker with instructions and assigned him tasks to perform. He performed his services according to the firm's scheduled business hours and would inform the firm when he was not coming in, indicating that he had regular work hours though somewhat flexible. The worker kept his own time records, which were verified by the firm. He was paid according to hours worked at the firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

According to the firm, after the worker finished part of the flooring job, he was given other chores or tasks by the firm until its business slowed down enough to complete the remaining floors. 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. In addition, the worker provided his services on a regular basis throughout the time period involved; his services were not just a one-time occurrence. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 firm reimbursed the worker for all of his purchases needed to complete the work on the firm's floors. He then proceeded to provide other services for the firm. For all his services for the firm, he was paid an hourly rate of pay, incurred no related expenses for which he was not reimbursed and had no other economic risk other than the loss of his hourly rate of pay. 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. 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.

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 for any part of the work relationship. The worker provided his labor for various jobs and work at the firm's place of business. There was no evidence to support the fact that he was operating an independent business enterprise other than a name. He did not maintain a place of business or advertise. There was no evidence that he provided floor reconditioning services for others which would have supported an independent business venture operated by the worker, during the same period of time that he worked for the firm. 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.