

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.104 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is an aircraft maintenance business. The firm engaged the worker who was licensed and certified to perform aircraft maintenance services for the firm's business operation. The firm assigned the worker services to perform based on the firm's customers requests and business needs. The firm, firm's resources, 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 final resolution that the worker was not able to resolve with firm's provided resource materials. No reports were required by the firm. The firm determined the worker's work schedule. The firm required the worker to perform the services personally at the firm's hanger location. The firm hired and paid substitutes or helpers as needed.

The firm provided all equipment, materials, tools, and supplies. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. A verbal working relationship was entered into. The worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. Both parties 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 who had experience and credentials to perform services for the firm's business operation. The firm assigned the worker services to perform based on the firm's customer's request and firm's business needs. The firm, firm's resource materials, and 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 firm required the worker to contact the firm regarding resolution to any problems or complaints the worker was not able to resolve. The firm required the worker to perform the services personally at the firm's place of business during hours determined by the firm. The firm hired and paid substitutes or helpers as needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the equipment, materials, tools, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk. 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 firm indicated there was a verbal working relationship agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did perform similar services for others while performing services for the firm 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 at the firm's place of business under the firm's business name on a regular and continuous basis over several years.

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.