

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.109 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 operating a mechanic's shop. The firm engaged the worker to perform mechanic services for the firm's business. The worker was interviewed for the job by the firm. The firm provided no formal training due to worker's experience. The firm assigned the worker services to perform and determined the order in which to perform the services. The firm 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 worker was required to provide the firm with oral and then written invoices on time spent on the jobs and parts used to perform the jobs. The firm required the worker to perform the services personally. The worker performed the services at the firm's place of business and sometimes off site where repairs needed to be performed.

The firm provided a tow truck, service truck, fork lift, tire tools, impact wrenches, air compressor, and uniforms. The worker provided personal tools. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a piecework basis 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 parts. The worker could not suffer any economic loss and had no financial risk per the worker. The firm indicated damage to tools as worker's economic loss and financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The firm indicated unknown to worker advertising as a business to the public. The worker stated no similar services were performed for others and he advertised the firm's business by wearing firm provided uniforms with firm's name on them. 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 was experienced to perform mechanic services for the firm's business. The firm assigned the worker services to perform based on business needs. The firm 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 any problems or complaints for resolution. The firm required the worker to provide reports on time and materials used while performing services for the firm's customers. The firm allowed the worker to work a variable flexible schedule based on business needs. The firm required the worker to perform the services personally at the firm's premises. 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 on-going business capital outlays with business risk an employer/employee relationship is evident. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. In this case, the worker had no significant financial investment in a business and did not incur any on-going significant 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 firm provided equipment, materials, and supplies. The worker provided personal tools of the trade. The firm paid the worker on a piecework basis and the customers paid the firm. The firm determined the level of payment for the parts and services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits and loss 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 were no contracts between the firm and the worker. The worker did perform similar services for others per the firm and did not need the firm's prior approval to do so. 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 not advertise 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 variable schedule over a period of 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.