

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.114 RepairMaintenanceWkr

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The worker initiated the request for a determination of her work status as a housekeeper cleaning houses at the firm's clients' homes in tax years 2014 to 2016. The firm's business is described as housecleaning services. The worker received a text from firm letting her know what time and where they would meet. The firm drove the worker from job to job and then returned the worker to her car at end of day.

The firm did not respond to the initial request for information and the firm's Letter 5367 was not returned as 'undeliverable'; the worker was issued a courtesy letter on November 30, 2016.

The firm's complete response was received December 13, 2017. The firm's business is described as residential and commercial cleaning. The worker cleaned houses and was known as a helper to clients. The firm indicated there was a verbal agreement that the worker would get paid more to over her taxes and that she could come and go as she pleased and perform the job how she wanted to as long as it was done.

According to the firm, there was no training or instructions given to the worker. Discussion took place as to the worker's schedule and agreed on the time and place. The worker determined the methods by which the services were performed. The worker was required to contact the firm if she encountered any problems or complaints. The firm indicated the worker did not have a set schedule and that services were rendered at the customers' locations for 1-6 hours. The worker was not required to perform the services personally; and it was noted that no helpers or substitutes were needed.

The worker responded that she was given specific training and instructions as to products to use and how each house was cleaned and assigned specific areas. She received the job assignments via text and verbally letting her know what time and where the firm and worker would meet, and she traveled with the firm's owner from job to job. The firm determined the methods by which the worker's services were performed and any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered at client's house anywhere from 2-4 hours according to the customer's needs. The worker replied she was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm response indicated there were no supplies, equipment, or materials provided by the firm or the worker; the homeowner or business provided everything. The firm responded that the worker was paid per job; she set the rate and was paid that rate per job, on a weekly basis for jobs completed. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance coverage. The worker was at risk for a loss if there was damage to third party belongings. The firm indicated that the worker established the level of payment for services provided.

The worker responded the firm provided everything. The worker furnished nothing and stated she did not lease equipment and did not incur expenses in the performance of the job. The worker was paid an hourly wage; the customers paid the firm. The worker indicated she was not at risk for a financial loss in this work relationship and that the firm established the level of payment for services provided.

Both parties acknowledged that there were no benefits extended to the worker and that either party could terminate the work arrangement without incurring a liability or penalty. The firm indicated the worker was performing similar services to others; the worker disagreed.

In a subsequent conversation the firm provided the following: the worker did not bid jobs; the worker was paid more per hour to cover her taxes; the firm contracts with the commercial and residential customers; the firm's owner and worker always worked together; the worker was paid every week based on the number of hours worked; and, the worker was not required to be bonded or carry any liability insurance.

Analysis

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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties and have applied the above law to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

CONCLUSION

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.