

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.115 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 operates an online referral platform used to connect individuals (customers) seeking qualified service providers to perform household projects (e.g. plumbing, electrical, moving, cleaning, painting, etc). The worker in this case was a service professional who entered into a contract with the firm to use its platform to obtain work. The firm considered the worker as an independent contractor, and issued the worker a Form 1099-MISC at year-end to report the monies received for services performed as non-employee compensation.

To use the firm's platform, services professionals were required to enter into a written Service Agreement wherein they acknowledge that the firm's technology platform was a referral tool and that all services were performed for the customer requesting the services, and not for the firm. Once service professionals were registered on the firm's platform, they claim specific jobs listed by customers. The professionals may complete as many jobs as they wish and were under no obligation to claim any minimum number of jobs.

Before receiving access to the firm's platform, service professionals must also review and agree to the terms of use of the firm's platform. The agreement controlled the work done. The firm's platform is intended to refer customers only to those service professionals who maintained the highest standards of professionalism and quality service. Service professionals agreed to maintain high standards of professionalism and service, including but not limited to maintaining tools and materials consistent with industry standards and in good working condition, and maintaining appearance and grooming standards consistent with industry standards. Service professionals acknowledged and agreed that they must maintain a customer rating at or above the minimum rating established by the firm for access to the platform. Failing to maintain the minimum rating constituted a material breach of this agreement. The firm reserved the right to deactivate, upon written notice, the service professional's access to its platform.

Customers paid for completed jobs through the firm's platform at the rates quoted by the firm at the time the job was posted on the platform, which are based on the stated parameters of the job. Each job made available to the service professionals on the platform set forth the time frame, estimated work time, details about the service requested, job rate, and the estimated service fee that the service professionals shall be entitled to upon completion of the job, in accordance with this agreement, as modified from time to time. The difference between the job rate and the service fee shall be the fee owed to the firm for referring the job and facilitating the payment from the customer to the service professional. If a job booked by the service professional required more time to complete than the estimated work time, the customer and the service professional may, prior to service professional providing any service above and beyond the estimate work time, negotiate an increase in service fees based on the estimated additional time needed to complete the job. Upon agreement to an increase in service fees, the service professional and customer shall notify the firm.

The worker in this case was required to attend a 5-hour orientation class. The firm and worker both determined the work methods by which to perform the services. Work related problems were reported to the firm for resolution purposes. The worker's routine consisted of checking in/out, cleaning in the order in which assignments were booked, and leaving promotional materials at the customer's location. The worker performed the services personally, at customer locations. The worker engaged helpers/substitutes with the firm's approval, as background checks were required for security reasons. The worker paid the substitutes/helpers for their services, with no expense reimbursement from the firm.

The firm did not carry workers' compensation insurance on the worker. No employment benefits were made available to the worker. No information was provided to support that the worker performed similar services for others. The firm's platform was one way that the worker could advertise her services. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker used the firm's platform, under the firm's terms and conditions, and represented the firm in the performance of the services performed. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that the worker performed services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov