

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.116 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 payer is a sole proprietor providing various cleaning services to their customers. The worker was engaged by the firm to provide janitorial services. There was no written agreement between the two parties. The worker got the position as a result of an acquaintance while working in the same district as the payer.

The worker was approached by the payer with an offer to make extra income. The payer needed assistance with fulfilling his agreement he had with one of his customers. The worker was required to take an on-line course provided by the customer to see how the worker should perform her services. The worker was also required to provide additional help as the job was too big for one individual. The worker was responsible to supervise the additional helpers. The payer gave the worker her assignments. The payer periodically checked on the services provided by the worker to make sure the services met the customer's needs and satisfaction. The worker did rely upon the payer to resolve her problems and complaints.

The supplies and equipment were provided by the customer since the services required specialized supplies and equipment. The worker was paid on a monthly basis by the payer. The worker was paid in cash by the payer for both her services and the services of the additional people that were needed. It was the worker's responsibility to pay the additional helpers. The customer paid the payer directly for the services they received.

Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. There was no evidence the worker offered her services to the general public as operating her own business. The payer stated the worker performed her services under the firm's business name. The payer discharged the worker due to poor job performance.

Analysis

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.

If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. However, it is also possible that the individual may be an employee acting in the capacity of a foreman for, or a representative of, the employer. The worker in the instant case was responsible to answer to the payer that the services provided were up to the customer's standards as an employee.

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.

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.

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.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

The worker was an employee according to common law. The information provided by both parties showed the worker did receive specific training on sanitization in order to perform her services. The worker was required to report to the firm on what services were performed. The firm did periodic checks to make sure the worker's services were up to the customers standards which showed control by the firm. The customer provided the supplies and equipment as this type of services would require specialized products and equipment to achieve the proper sanitization. Financial control was also demonstrated by the firm paying the worker on a monthly basis. The fact the firm stated the worker performed services under his business name demonstrated the worker's services were integrated into the firm's daily operations. The firm stated they discharged the worker which indicated the firm had control over the worker's services through the threat of dismissal.

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 go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989