

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.120 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 organization operates a program to assist the general public in coping with sexual assault. The organization engaged the worker to clean their facility on a weekly basis. The worker has performed services for the organization since 2010. There was no written agreement between the two parties.

The worker stated she was required to perform her services every Saturday. The worker stated she received her assignments from the organization and the organization stated the worker decided her own assignments. The worker stated the organization determined how the assignments should be performed. The Executive Director resolved the worker's problems and complaints. The worker had a regular weekly Saturday schedule. All of the worker's services were performed at the organization's location. The worker was required to perform the services personally.

The organization provided the vacuum and all cleaning supplies. The worker provided her service. The worker did not lease any space to perform the services. The worker did not incur any expenses in the performance of her duties. The worker was paid monthly. The worker was not allowed a drawing account. The worker stated the firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. It appears the relationship is still on going.

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 services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

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.

The worker was an employee according to common law. The information provided by both parties show the worker was given her assignments and was required to perform her services on the weekend which showed control by the organization. The worker relied upon the organization to resolve problems and complaints which demonstrated a dependence upon the organization as an employer. The fact the worker was required to perform her services personally demonstrated the organization was interested in the methods used as well as being interested in the end result as an employer. The worker had no financial investment as the organization provided the location, equipment and supplies for the worker to perform her services. Financial control was shown by the organization paying the worker on a monthly salary. The worker cleaned the firm's place of business which showed the worker's services were integrated into the firm's daily operations.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.

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