

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.122 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 a coffee vending machine provider business. The firm engaged the worker through an application process to install, repair, and maintain coffee vending machines for the firm's customers. The firm provided the worker with vending machine repair training, business policies, and business procedures training on performing the services for the firm's customers. The firm assigned the worker jobs to perform based on the firm's customer's requests. The firm's management determined the methods used to perform the services. The firm required the worker to contact the management regarding any problems or complaints for resolution. The worker indicated that job reports were provided to the firm and the firm indicated reports required as not applicable. The worker's daily schedules varied based on the job assignments for the day. The firm required the worker to perform the services at the shop or customers locations. The firm did not require the worker to perform the services personally. The firm required the worker to obtain the firm's prior approval to hire substitutes or helpers and would not reimburse the worker if he paid any. The worker indicated the firm hired and paid substitutes or helpers.

The firm provided a computer, navigation equipment, and a company vehicle. The worker did not lease anything or incur any business expenses. The firm reimbursed all business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk.

There was a signed independent contractor agreement between the firm and the worker. The firm provided the worker with paid vacation benefits. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the working relationship and provided the worker with a severance payment upon the return of firm's equipment and supplies.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. 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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any 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 everything the worker needed in order to perform the services. The worker did not lease anything or incur any business expenses. The firm reimbursed all business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services and products sold. 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 made nor the risk of losses being incurred 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 was a signed independent contractor agreement provided indicating the worker to be an independent contractor in performance of the services. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm provided the worker with paid vacation benefits. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous basis over 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. The firm terminated the working relationship and provided the worker with a severance payment upon return of the firm's equipment and materials.