

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.131 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm provides property maintenance services. The worker was engaged by the firm to perform maintenance and general handyman services. The firm did not withhold taxes from the worker's remuneration for 2013 through 2016.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The firm provided the worker with his work assignments and determined the methods by which he performed them. The worker's schedule was dependent upon rides from the firm or other workers, and the firm's needs. He performed his services on the firm's job sites. The firm stated that the worker was not required to perform his services personally.

The firm provided the supplies and materials. The worker furnished his own tools. The firm paid the worker a daily rate. It did not cover him under workers' compensation. Customers paid the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business. The worker's risk of loss involved damage to tools and job materials that he would have had to replace; he would also have had to redo any bad jobs.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The firm stated that the worker provided similar services for others during the same time period. There is no evidence presented that the worker advertised his services or maintained a business listing. The worker terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform his services, it still provided the worker with his work assignments and the determined the methods by which to perform them. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. 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. The firm's statement that the worker performed services on an as-needed basis and was therefore, an independent contractor, is without merit as both employees and independent contractors can perform services when the needs of a business warrants. The worker performed his services on the firm's job sites. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The firm stated that the worker was not required to perform his services personally, but there is no evidence that he engaged and paid others to perform services for the firm on his behalf. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not bid on jobs, 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker furnished his personal tools. 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. The firm paid the worker at a daily rate. Payment by the day generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He performed his services under the firm's name. The worker was not engaged in an independent enterprise, but rather the maintenance and related services performed by the worker were a necessary and integral part of the firm's property maintenance business. 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. 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. These facts show that the firm retained control over the work relationship and services of the worker.

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.