

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.133 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 mobile vehicle cleaning business. The firm engaged the worker to perform mobile cleaning jobs when needed and available. The firm provided the worker with vehicle cleaning instructions. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints for resolution. No reports were required by the firm. The worker was required to perform the services personally at the firm's customers job sites. The worker stated the firm hired and paid substitutes or helpers when needed and the firm indicated not applicable to these questions.

The firm provided all equipment, materials, and supplies needed to perform the cleaning services. The worker provided nothing nor did the worker lease equipment or space. The worker did not incur any business expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided no benefits. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker started no similar services were performed for others. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. In this case the firm engaged the worker to perform part-time cleaning services for the firm's business as needed. The firm provided the worker with the necessary cleaning service instructions. The firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to perform the services personally at the customers locations. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any 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 paid by the customers and paid to the worker for performing the services. 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 performance of the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. A verbal part-time as needed agreement was indicated by the firm. It is noted that whether there is an employment relationship subject to employment tax withholding is a question of fact based on the autonomy of the work relationship and is not subject to negotiation written or verbal between the parties. The firm stated the worker did perform similar services for others and was not prohibited from doing so or required to obtain the firm's approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed part-time as needed cleaning services for the firm's business under the firm's business name on a continuous basis over several months at the firm's customers job sites.

Both the firm and 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.