

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.135 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

This is a family flooring installation and construction business operation. The firm engaged the worker to install hardwood flooring and notified the worker when jobs were available. The firm provided the worker with job details if worker accepted the jobs. No formal training was provided due to the worker's experience. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints the worker was not able to resolve for final resolution. The worker provided the firm with verbal job reports. The worker and firm's customers determined the work hours. The worker performed the services at the firm's customers job sites. The worker was required to perform the services personally. The firm hired and paid substitutes or helpers if needed. The worker would pay any hired by the worker and not be reimbursed by the firm if any were paid.

The firm provided equipment, materials, and supplies needed to perform the services. The worker provided personal tools. The worker did not lease equipment or space. The worker incurred expenses for personal tools and materials and the firm reimbursed material expenses or the other party reimbursed material expenses depending on the contract between the firm and firm's customers. The firm paid the worker an hourly wage and allowed the worker draws against earnings if requested. The customers paid the firm. The firm did not carry workers' compensation insurance. The worker carried liability insurance under the firm's business name as certificate holder. The firm and worker disagreed on who determined the level of payment for the services. The worker's economic loss and financial risks were related to loss or damages of personal tools and items.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The firm did not know if the worker advertised as a business to the public. The worker indicated no to advertising as a business to the public. The firm referred to the worker as a contractor under the firm's business name to the customers. Both parties agreed that the work relationship could be terminated 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 a family member who was experienced to install hardwood flooring for firm jobs as available and accepted. The firm notified the worker as jobs were available and provided the worker with job details if accepted by the worker. 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 worker contacted the firm or firm's general contractor regarding resolution to problems or complaints the worker was not able to resolve. The worker provided the firm with verbal job reports. The firm required the worker to perform the services personally at the customers job sites. Substitutes or helpers were hired and paid by the firm. 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 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 provided the job opportunities, equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal tools and items. The worker did not lease equipment or space. The worker incurred expenses for personal items. The firm, general contractor, or customer reimbursed business expenses based on the contracts between the parties. The firm paid the worker an hourly wage and allowed the worker draws against earnings as requested. The firm's customer paid the firm for the services. The firm determined the level of payment the customer paid the firm for providing the services and agreed to the hourly wage paid to the worker. The worker could not suffer any economic loss due to significant business capital outlays being made. The worker had no financial risk with regard to performance of the services. These facts evidence financial control by the firm over the services performed by the worker. The possibility of loss or damages to personal items used by the worker in performance of services would not be considered having control over profits made nor the risk of losses being incurred.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior 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 did not advertise to the public as being engaged in a business but rather performed the services personally at the firm's customers job sites under the firm's business name on a regular and continuous as needed and available basis.

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.