

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.137 RepairMaintenanceWkr

Determination:

☐ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a used car sales business. The firm engaged the worker to perform auto repair, maintenance, and detailing services for the firm's business operation. The firm assigned the worker jobs to perform based on the firm's business needs. The worker performed services at the firm's place of business and from home during the working relationship. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm allowed the worker to work on a flexible schedule basis depending on the services needed to be performed. The worker provided time reports per the worker and the firm stated not applicable to this question. The worker performed the services personally per the worker and the firm stated the worker was not required too. The parties disagreed on hiring and paying of substitutes or helpers.

The firm provided equipment, materials, and supplies when worker performed services at the firm's place of business and worker provided personal items when cleaning cars from home. The worker did not lease equipment or space. The worker incurred expenses when working from home and no expenses were reimbursed by the firm. The firm paid the worker an hourly wage when working at the firm's place of business and per car when working from workers' home. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the costs the customers paid for the products and services and the firm agreed to the payment made to the worker for performance of the services. The worker's economic loss and financial risks were related to possible damages while cleaning cars per the firm.

There were no contracts between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. 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. The relationship at the firm's place of business ended when the worker began performing auto detailing at the worker's home in October of 2014.

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 car repair, maintenance, and detailing services at the firm's place of business and detailing services at the worker's home. For the services performed at the firm's place of business the firm assigned jobs to the worker to perform based on the firm's business needs. The firm allowed the worker flexibility in the work schedule. The firm determined the methods used by the worker 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 provide time reports. The firm required the worker to perform the services personally at the firm's place of business. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services at the firm's place of business. The worker provided personal tools and materials when performing services from home. The worker did not lease equipment or space. The firm paid the worker an hourly wage when working at the firm's place of business and on a per job basis when working from home. The customers paid the firm for the services. The firm determined the level of payment the customers paid for the products or services performed and agreed to the hourly wage and amount paid to the worker for performance of the services. The worker could not suffer any economic loss and had no financial risk 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. The issue of the worker incurring a loss due to possible damages would not be considered having control of profits and losses in a working relationship.

There were no contracts between the firm and the worker. The worker did perform similar services for others while performing services for the firm 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 no advertising as a business to the public. The worker personally performed services both at the firm's place of business and from home during the working relationship.

Both parties retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.

In this case it is determined that the worker was an employee under common law for the repair, maintenance and detailing services performed for the firm at the firm's place of business under the firm's business name. The detailing services performed by the worker at the worker's home would be consider an independent contractor working relationship due to the worker having control over what, when, how, and where the services were performed as well as the costs associated with performance of the services.