

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.140 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 sole proprietor operating an automobile detailing business. The firm engaged the worker as a detailer. The worker performed services on an as-needed-basis. There was no written agreement between the two parties.

The worker stated he was trained how to clean the vehicles and the firm confirmed the worker was required to meet specific standards. The firm gave the worker his assignments. The firm stated the worker determined how to perform his assignments and the worker stated the firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The firm notified the worker when he needed his services. The worker services were performed at the firm's location. The worker was required to perform the services personally.

The firm provided all the equipment and supplies the worker needed to perform his services. The worker did not lease any space to perform the services. The worker stated he was paid by the hour and the firm stated they paid the worker by the day. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker stated he was represented as an employee performing services under the firm's business name and the firm stated they represented the worker as a contractor. The worker stated he was fired the firm stated they ended the relationship due to lack of work.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

The worker was an employee according to common law. The information provided by both parties showed the worker was required to perform his services to meet specific standards which showed control over the worker's services. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as the end result as an employer. The worker showed a dependency upon the firm as an employer to resolve his problems and complaints. It was the firm that had the financial investment as the firm provided the locations, equipment and supplies the worker needed to perform his services. Whether the worker was paid by the day or by the hour the firm had control of how much the worker would be compensated which showed control financial control. It was the firm that could suffer a significant loss as the firm set the amount to charge the customer and was responsible to collect that amount directly. The worker cleaned vehicles for the firm's detailing business which showed the worker's services were integrated into the firm's daily operations. Since the firm retained the right to discharge the worker without incurring a liability showed control over the worker through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989