

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.141 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is in the business of pressure washing residential and commercial buildings. The worker was engaged by the firm to provide pressure washing services. The firm reported the worker's remuneration on Forms 1099-MISC for 2014 and 2015.

Information from the parties supports that the firm trained the worker on specific equipment. It provided the worker with his work assignments. If problems or complaints occurred, the the firm was ultimately responsible for their resolution. The firm gave the worker a list of jobs, and suggested a start time and schedule on the days he chose to work, but he made his own hours. The worker performed his services at the firm's customers' locations. The firm stated that the worker was not required to perform his services personally. If additional personnel were needed, the worker was responsible for hiring and compensating them.

The firm provided the equipment and supplies. The worker did not lease equipment. The firm paid the worker on a piece-work basis. It covered 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, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The worker stated that he did not advertise his services or provide similar services for others during the same time period. He performed his services under the firm's name. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, 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, the firm trained the worker on using its equipment. It was ultimately responsible for resolving any problems or complaints that may have occurred, showing the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure its customers' satisfaction. The firm allowed the worker some flexibility in his schedule, but once he accepted a list of jobs, he was obligated to finish it. There is no evidence presented that the worker 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. 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 firm paid the worker on a piece-work basis, and the risk of loss was absent. 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. 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. The worker performed his services under the firm's name, enabling the firm to fulfill its obligations to its customers. The worker was not engaged in an independent enterprise, but rather the pressure washing services performed by the worker were a necessary and integral part of the firm's pressure washing 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. 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.