

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.145 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

According to the information and documentation submitted, the firm's business is based on restaurant repairs and maintenance; which includes repairs of sewer systems, tile work, HVAC, and refrigeration maintenance and cleaning services. The worker performed services as a maintenance technician providing maintenance and repair services under [REDACTED]. The firm reported the worker's earnings on Form 1099-MISC at year end.

The worker performed his services at the firm's client's locations. The firm provided the worker with his work assignments and instructions for the job at hand. The worker provided reports to the firm when the job was completed by sending photos of the completed work. The firm paid the worker an hourly wage for his services. The firm terminated the worker's services without incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the worker personally performed his services, under the firm's name, at the firm's client's locations. The firm provided the worker with his assignments and instructions. The worker provided reports to the firm. The firm paid the worker an hourly wage for his services. The worker had no investment in facilities providing similar services and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.