

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW.148 RepairMaintenanceWkr

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is in the business of commercial and residential painting, remodeling, and drywall work. As the owner of the firm, you engaged the worker to perform the above services. You did not withhold taxes from the worker's remuneration in 2012 through 2017.

Information from the parties supports that you relied upon the worker's prior training and experience to perform his services. You provided the worker with his work assignments and the methods by which to perform them. If problems or complaints occurred, the worker contacted you for resolution. The worker followed the schedule that you set. He performed his services on your customers' premises. The worker was required to perform his services personally. If additional personnel were needed, you were responsible for hiring and compensating them.

You provided the equipment and materials. The worker did not incur expenses in the performance of his services. You paid the worker at an hourly rate. You covered the worker under workers' compensation. Customers paid your firm directly at prices that you established. Neither party indicated an investment by the worker in your business or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You stated that you provided the worker with sick pay and personal days. The worker performed his services under your firm's name. There is no evidence presented showing the worker advertised his services or maintained a business listing. 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, you relied upon the worker's prior training and experience to perform his services. You were responsible for resolving any problems or complaints that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The worker followed the schedule that you set and performed his services on your customers' premises. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for you on his behalf. 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. These facts show that you 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 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you 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. He performed his services under your firm's name. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your firm's 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. 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 you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.