

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.149 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

Information provided indicates the firm does retail sales and repair of computer equipment. The worker had been retained in 2014-2015 as a repair technician. The firm reported the income on Form 1099-MISC. The firm stated work assignments were given via e-mail or phone. There were no set work hours. The work was performed on the firm premises. The worker was required to perform the work personally.

The worker indicated no specific training was given. Work assignments were given orally or in some cases in writing. He contacted [REDACTED] if any issues arose. All work was inspected after completion by [REDACTED]. A printout of all items and tasks completed per laptop refurbished was provided to the firm. He typically worked Monday through Friday ten am to six pm. The work was performed at the home of [REDACTED] (business location). Weekly meetings were held to discuss the work for the week. He agreed he was to perform the services personally.

Both parties agreed the firm provided computer laptops, company software, paper, computer parts etc. Both agree no equipment or space was leased by the worker. The firm indicated he was paid on a commission basis, the worker indicated he was paid by the hour. Both parties agree the client paid the firm.

Both parties indicated either could terminate the work relationship without incurring a penalty or liability. The firm indicated his services were no longer required. The worker indicated he left for a better paying job.
Documentation provided by parties:

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. Instructions were given from the firm, indicating the order of work to be performed.

Factors that illustrate whether there is 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. The services were performed on the firm premises, utilizing the firm's equipment and supplies. The worker did not bid on jobs, nor did he perform the services under his business name. Whether he was paid on a commission basis or the by hour, both indicate no opportunity to incur a profit or suffer a loss, but compensation for services rendered.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, 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 business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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.