

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.152 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 cleaning service. The worker is engaged by the firm to provide janitorial services. The firm reported the worker's remuneration on Forms W-2 for 2014 and 2015. In 2015, the firm reclassified the worker from an employee to an independent contractor and reported the subsequent income on Form 1099-MISC. There is no indication that the worker's services or the work relationship changed when the firm reclassified her.

It is our usual practice in cases of this type to solicit information from both parties involved. We requested information from the firm concerning this work relationship. Because we received no reply, we are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination.

The firm relies upon the worker's prior training and experience to perform her services. The firm determines the methods by which the worker performs her services. If problems or complaints occur, the worker contacts the firm for resolution. The worker generally follows a routine schedule. She performs her services at specific sites. If additional personnel are needed, the firm is responsible for hiring and compensating them.

The firm provides the supplies, equipment, and materials. The worker does not incur expenses in the performance of her services. The firm pays the worker on a salary basis. It reimburses her for fuel expenses. The firm does not cover the worker under workers' compensation. Customers pay the firm directly at prices established by the firm. The worker did not indicate an investment in the firm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

The firm does not make benefits available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability. The worker performs similar services for others. She does not advertise her services or maintain a business listing.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, while the firm relies upon the worker's prior training and experience to perform her services, it is responsible for resolving any problems or complaints, showing the firm retains 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 worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for the firm on her 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 the firm retains behavioral control over the services of the worker.

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, does 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 pays the worker on a salary basis. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that the firm retains control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. She is not engaged in an independent enterprise, but rather the janitorial services performed by the worker are a necessary and integral part of the firm's cleaning services 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 performs similar services for others; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm does not provide benefits to the worker, both parties reserve the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.