

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.155 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 rental property business. The worker was engaged by the firm to perform mowing and maintenance services. The firm reported the worker's remuneration on Forms 1099-MISC for 2013 and 2014.

Information from the parties supports that the firm relied upon the worker's prior experience to perform his services. The firm provided the worker with his work assignments. If problems or complaints occurred, the worker contacted the apartment manager for resolution. The worker performed his services on the firm's as-needed basis. He performed his services on the firm's properties. The worker was required to perform his services personally.

The firm provided the mower. The worker used his personal tools. He did not lease space or equipment, or incur expenses in the performance of his services. The firm reimbursed the worker for out of pocket repairs and supplies. It paid the worker at an hourly rate. Neither party indicated an investment by the worker in the firm or a related business. If the worker performed shoddy workmanship or caused damage by negligence, he could have been liable for damages.

The firm did not make general benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. There is no evidence presented showing the worker advertised his services or maintained a business listing. He stated he did not provide similar services for others during the same time period.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform his services, it was responsible for resolving any problems or complaints that may have occurred. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm's statement that the worker performed services on an as-needed basis and was therefore, an independent contractor, is without merit as both employees and independent contractors can perform services when the needs of a business warrants. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm 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 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 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. The worker used his personal tools. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. 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 was not engaged in an independent enterprise, but rather the mowing and maintenance services performed by the worker were a necessary and integral part of the firm's rental property 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, both parties retained the right to terminate the work relationship without incurring a liability, a factor indicating 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.