

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is a remodeling contractor. The worker was engaged as a carpenter's helper. He received a Form 1099-MISC for his services in 2016 and 2017, and continued to provide services in 2018 as well. There was no written agreement.

According to the worker, the firm provided visual and hands-on training. The worker received his work assignments each day by being told where to go and what to do. The firm determined the methods by which the assignments were performed and would be contacted if any problems and issues arose. The firm agreed noting that its supervisor provided instructions, work assignments and determined the methods. There were no required reports. The worker worked set scheduled hours, usually at customers' locations. The firm added that the worker would show up at the work site, and work until the task and/or project was completed for the day at various customers' locations. The firm noted that the worker was required to provide the services personally. According to the worker, only the firm hired and paid any substitute workers.

The firm provided any specialty tools needed. Both parties agreed that the worker provided general carpentry tools. Both also agreed that the worker was paid an hourly rate and sometimes a bonus. Both mentioned that he had the risk of possible loss of his personal tools. The customer paid the firm and established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The relationship has not ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm 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 bid on jobs and engaged workers to perform the services needed. The worker was a helper for the firm's project supervisor. The firm's supervisor provided the worker with hands-on training, work assignments, and directed his work activities. The worker worked set hours scheduled by the firm and worked when needed and available. 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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. While the worker worked only when needed, his services were continuous and not a one-time event. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 worker may have provided general carpentry tools as a helper. 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 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. In addition, the worker was paid by the hour along with occasional bonuses. 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.

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. There were no benefits and there was no written agreement. The worker was engaged to provide labor as a helper for the firm's remodeling business. When doing so, the worker was not engaged in a separate business venture. As a helper, his services were part of and integrated into the firm's business activities. 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.