

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 in the business of residential and commercial painting that engaged the worker as a painter in 2018.

The worker received his assignments from the firm's owners. The worker stated that he was given instructions on what work is to be done when he gets to the job. Both parties stated the firm determined the methods by which the assignments were performed, and any problems or complaints were elevated and resolved by the firm. The worker's routine and schedule varied; depending on the agreements made with the customers and the availability of the location, where the services were to be performed. The worker performed his services at the locations specified by the firm and performed his services personally. If any substitutes or helper were needed, they were hired and paid by the firm.

The firm provided the worker with all the necessary materials, supplies, and equipment he needed to perform his job duties, such as paint, brushes ladders, etc. The worker also provided some hand tools. The worker did not lease any equipment nor incur any expenses. In providing his services to the firm, he did not assume any business risk that would have earned him a profit or occasioned him a loss. He was paid an hourly wage for his services. The firm set the rate charged to their customers and they paid the firm directly.

There was no written contract describing the terms and conditions of the relationship. The worker did perform similar work for others. The worker did not advertise and did not maintain a business listing or a business office. The worker performed his services in the firm's name. Either party could terminate the relationship at any time without incurring a liability, in fact the relationship has ended.

Analysis

After analysis of the common law factors as they related to this case, we find that the firm exercised sufficient control over the worker to establish the existence of an employer-employee relationship.

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. 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. 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. The firm maintained the right to direct and control the worker, which is an indication of behavioral control.

The firm provided the worker with all the necessary materials, supplies, and equipment, determined the rate charged the customers, and paid the worker an hourly wage, which is an indication of financial control. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The point that the worker provided his own hand tools is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

Although the worker provided similar services for others, 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. There was no contract, no business risk for the worker, and either party could terminate the relationship at any time; indicating the relationship of the parties was employer-employee.

Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.