

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.23 Laborer/Trades	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. [REDACTED] responded to our request for completion of Form SS-8.

From the information provided the firm is in the business of manufacturing lip balm and the worker was engaged as a packing production assistant who would take the finished product and package the product per the customers' requests. The worker was required to personally perform his services at the firm's premises on a temporary basis. The firm states the worker determined the hours he was available and he reported to their premises at times he determined. The worker was given instructions by the firm on how the customers wanted their finished products to be packaged. The worker received his assignments from the firm's supervisor and the firm states the worker's methods were determined between the worker and them. The worker was required to contact the firm if any problems or complaints occurred for their resolution. The worker was not required to submit reports to the firm and the firm states the worker was not required to attend meetings.

The firm provided all supplies and materials to the worker in order to perform his services. The worker did not incur expenses, he was paid at an hourly rate, and he did not have an opportunity to incur a loss. The firm determined the worker's rate of pay and they reported the worker's earnings on a Form 1099-MISC.

The worker did not perform similar services for others, he did not advertise his services, and the firm states the worker was represented as a temporary employee. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

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, the firm provided the worker with instructions on how to package products according to their clients' specifications. The worker reported to a supervisor and the supervisor ultimately determined how the worker performed his services. The firm was responsible for resolving any issues or problems that arose on the job site. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on an as-needed, temporary basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

While the firm provided the worker with some freedom of action as to when he performed his services due to his school schedule, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status.

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.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.