

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.29 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

Information provided indicated the firm is a cleaning company called [REDACTED]. It cleans offices and home in the city of [REDACTED]. The firm hired individuals to assist with its customers. The firm treated the worker as employee for tax year 2012. The firm stated by the end of that year the majority of the employees expressed a desire to make more money by taking on clients outside of [REDACTED]. She was fine with that, so she switched their status to independent contractors. Several left because they had more than enough contracts to deal with without sharing her contracts. They left without penalty or consequence. Workers still performing services for her had several clients on the side from what she understood, she did not know as it was their businesses. In 2012 the employees were expected to use checklists when cleaning houses and offices and wear a company shirt. In 2013 they did away with those. Many wore tank tops and flip flops. There were some contracts that still required shirts and shoes; however, they did not have to work those contracts if they now chose not to. They could come and go as they pleased, if they had to drop a contractor or couldn't make it, or didn't want it, she herself would pick it up. There were a certain number of contracts, each wanting the contractor there at a specific time and day. They could pick the days they wanted to work and drop days with no consequence. [REDACTED] was a hard worker and preferred to work every day. When she couldn't or preferred not to, she didn't with no consequence from her. [REDACTED] could choose to work alone or with another contractor. She often chose to work with [REDACTED], or herself (owner). Due to the nature of the business they were required to pass a background check. The firm stated she paid all workers. A percentage of each contract was offered to [REDACTED] at one point she refused and requested to remain on hourly pay. It was clear to all workers they would be responsible for their own taxes.

The worker indicated she was treated at all times like an employee. She worked Monday through Friday 20-30 hours per week. The firm provided her with the list of houses they were supposed to clean. She agreed she worked with a co-worker [REDACTED]. Both parties agreed the firm provided the cleaning supplies. Both agreed the worker was paid by the hour and the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law."

Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Analysis

ANALYSIS

We have applied the above law to the information submitted. 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. The services continued to be performed under the firm's business name for its clients. At no time had there been a signed contract, or bids placed to obtain the work performed going forward in 2013. The firm continued to be responsible for its contracts with its clients. They would and did express when they did not want certain person to continue to perform services. It was then up the firm, to either take over or find someone else to do it. The firm continued to provide cleaning supplies, and continued to be paid from its clients.