

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.34 Laborer/Trades

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a junk removal company. The worker provided general laborer services for the firm from 2010 through 2012. The firm reported the income on Form 1099-MISC. The firm stated he consulted an attorney when he started the company and was informed that classifying the workers as independent contractors was appropriate. The firm stated the worker was hired as a 1099 sub-contractor at the beginning of the work relationship. The firm stated the worker rode in the truck with him, saw what he did, then was given free rein to get the jobs done as he saw fit. Work assignments were given via text or phone. The firm stated he could have also solicited business. The worker determined how he performed the services. The firm stated the work schedule varied, this worker was a full time student, he accepted and refused jobs at will. Once accepted, services were performed at the firm's customer locations. It was required he performed services personally. The firm stated they provided the truck and company uniform shirt. The worker was paid by the hour and given bonuses and overtime. The firm stated the work was given advances on several occasions. The firm stated the worker had been given a price guide and was free to negotiate the prices. Either party could terminate the work relationship without incurring a penalty or liability. The worker had been represented as a team member of [REDACTED]. The worker had been terminated.

The worker indicated he had been provided training by the company, how to operate hand tools and the work truck and how to give estimates to clients. Work assignments were given via text from the firm owner. He was required to complete work invoices. He stated he would arrive to the firm, pick up work truck and work orders proceed to perform said orders, return completed invoices at the end of the day. The firm hired and paid all workers. The worker agreed he was provided a work truck and uniform. He stated he stated he was paid by the hour, the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated business had slowed, so he was not assigned anymore work.

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

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. See Rev. Rul. 56-694, 1956-2 C.B. 694.

Analysis

The term “full-time” may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. See Rev. Rul. 71-524, 1971-2 C.B. 346.

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. Both firm and worker indicated training and instructions had been provided by the firm at the beginning of the work relationship. All work was assigned on a daily basis by the firm. The firm indicated the worker rode to the job site with him and proceeded to perform services as instructed.

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 in the instant case was never in a position to incur a profit or suffer a financial loss. The firm stated he was paid by the hour, paid for all overtime worked, given yearly holiday bonuses and allowed cash advances when needed. The firm provided a company truck and company uniform shirts. (Also, indicating the work was performed under the firm’s business name, not that of the worker.)

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.