

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.49 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

The firm is in the business of manufacturing cabinets and furniture. The worker was engaged to measure, build, and install the cabinets as well as to deliver, run errands, and perform any other duties as assigned. The worker received a 2013 Form 1099-MISC for his services. He also provided services in previous years for which he received 1099s, though the circumstances differed. The determination was requested for the 2013 year. There was no written agreement.

The firm provided on-the-job training according to the worker. The worker would receive his work assignments daily; the firm indicated that the worker would be informed when the cabinetry was ready to be delivered. The worker indicated that the firm determined the methods by which the assignments were performed with the firm noting that both parties did. The worker noted that he would contact the firm for any problems or issues; the firm noted that either of them would be responsible for the resolution, depending on the problem/issue. Both agreed that there were no reports. The worker indicated that his routine consisted of arriving in the morning, receiving his work assignment such as sanding, building, measuring, delivering goods or providing transportation for the firm's owner, and leaving for the day when told. The firm noted that the worker would complete each specific project, either on the road or at customers' locations. The worker noted that he worked 70% of the time at the firm's location, 10% at the client's home, and 20% transporting the owner.

The worker noted that the firm provided all of the supplies, materials, equipment and property; however the firm noted that it provided the trailer with the worker providing the truck and small tools. The worker acknowledged that in earlier years, he provided the truck but that in 2013, the vehicle he drove belonged to the firm. The worker noted that he received an hourly rate; the firm noted that it paid a trucking fee based on mileage and time. The worker indicated that he had no other economic risk though the firm noted that the worker could incur damage to his truck. Both agreed that the customer paid the firm. The firm noted that the worker submitted a note with time and mileage to be paid according to an agreed-upon basis.

Both the firm and the worker agreed that there were no benefits except for a Christmas bonus mentioned by the worker; either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others during the time period in question. The worker noted that he provided services under [REDACTED]; the firm noted that the worker was a delivery and installation contractor. The worker indicated that the relationship had not ended; but the firm noted on its response that the worker quit.

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. 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.

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 provided the worker with instructions and his assigned duties whether it involved delivering and installing cabinets, working in the shop or running errands as directed by the firm. He performed his services according to the firm's scheduled work hours and days; he was told when to come in, what to do and when to leave. He kept track of his hours and turned in his time in order to be paid. 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.

In addition, the worker provided his services on a continuous basis throughout the time period involved. 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 received an hourly rate of pay whether he was delivering cabinets or working in the shop; he had no other economic risk. 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. The firm provided the vehicle for the worker to drive as well as the shop, equipment and materials. 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.

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 firm engaged the worker to deliver and install its cabinets as well as to work in its woodworking shop. When driving the firm's vehicle, or building cabinets at the firm's premises, the worker was not engaged in an independent business venture. But instead the services performed by the worker were integral and essential to the firm's operations. 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.