

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.111 Tradesperson	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

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The worker initiated the request for a determination of his work status as a carpenter in tax year 2014. The firm's business is described as remodeling or new construction work. The worker indicated that there has been an on-going relationship from to 2005 to the present; however, in a subsequent conversation he indicated he wanted to include the 2013, 2015, and 2016 tax years.

The firm's response was signed by the president. The firm's business is described as general carpentry, residential remodeling, snow plowing, residential energy code compliance testing, and home inspection. The worker performed services as general carpentry and assisting with residential energy compliance testing and snowplowing. The firm indicates the work relationship started in or about 2008 and has continued intermittently.

There was no specific training given by the firm; however, the firm did pay for the worker to take a ██████████ certification class. The work assignments are conveyed through conversations the day before or the morning of the day in question. The firm indicated that the worker is able to handle any problem that may arise; if not, the matter can be directed to the firm. The firm indicated the worker is not required to perform services personally and that they have both paid for helpers.

The worker responded that job assignments are decided by the firm; and it is the firm that determines the methods by which the worker's services are performed with any problems or complaints being directed to the firm for resolution. The worker indicated that he is not required to perform the services personally.

The firm and worker concurred that both provide tools when working jobs together or separately. The worker is paid an hourly wage. The customers pay the firm. The firm responded that the worker is asked for an estimate of time when pricing a job. There are no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. Both parties acknowledged that the worker does perform same or similar services; the worker is not required to obtain the firm's approval.

Analysis

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.

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.

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..

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. "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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations are met. The worker had not been operating a separate and distinct business; 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. 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. In this case, the worker is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.