

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.114 Laborer/Trades

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The payer is a sole proprietor in the business of installing vinyl siding and windows on a small scale. The payer engaged the worker as a laborer. The worker primarily measured, cut, and applied vinyl siding and assisted the payer with the installation of windows. The payer believed the worker was an independent contractor because his hours were based on the payer's work availability and the worker signed an agreement.

The worker did receive instructions according to the needs of the jobsite. The worker received his assignments from the payer and the payer determined how the assignments should be performed. The worker relied upon the payer to resolve problems and complaints. The payer stated the worker's schedule varied according to the needs on the jobsite. The worker stated the payer picked him to go to the jobsite and brought him back according to the day's schedule. The worker performed his services on the jobsite acquired by the payer. The payer stated the worker was required to perform his services personally.

The payer provided all of the large equipment and the worker provided his own personal hand tools. The worker did not incur significant expenses in the performance of his duties. The worker was paid on an hourly basis. The payer stated the worker could have received an advance if he requested one. The customers paid the payer directly. The payer established the level of payment to the customers for the services provided. The worker could not suffer a significant loss and financial risk in the performance of his services.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the payer. The worker was not a member of a union. The payer stated the worker was represented as a contractor performing services under the payer's business name. The payer stated the worker found other employment for another firm.

The payer did provide a copy of an agreement signed by both parties. The agreement stated the worker understood he was working for [REDACTED] as a contract laborer. The worker was responsible to pay his own taxes and would receive a 1099-MISC Form at year-end. The worker understood the payer as a small business did not offer insurance.

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.

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.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

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.

The worker was an employee according to common law. The information provided by both parties showed control since the payer instructed the worker how to perform his services according to the needs of the job acquired by the payer. The payer also showed control by giving the worker his assignments and since he determined how those assignments should be performed. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. The payer had the financial investment since the payer acquired the job and provided all the large equipment and supplies the worker needed to perform his services. The worker did provide his own personal hand tools which is a common practice in this industry and does indicate the worker was self-employed. It was the payer that could suffer a significant loss since the payer was responsible to collect the amount they charge to the customers. The worker performed laborer services according to the firm's instructions which demonstrated the worker's services were integrated into the firm's daily operations.

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.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989