

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.131 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 fabricating structural steel. The worker was engaged by the firm in 2011 as a welder. In 2014, when the worker was certified to perform [REDACTED] annual vehicle inspection services, he also performed trailer maintenance, repair, and certification services on the firm's trailers. The firm reported the worker's remuneration for his welding services on Forms W-2 for 2011 through 2014. It reported his remuneration for [REDACTED] services on Form 1099-MISC for 2014.

Information from the parties supports that the firm reimbursed the worker for his [REDACTED] training and certification. It relied upon the worker's certification to perform trailer inspection and repair services. The firm provided the worker with his work assignments. He submitted invoices to the firm for the hours he worked on trailer repairs and inspections. All inspections were scheduled by the firm. The worker performed his services on the firm's premises. He was required to perform his services personally.

The firm provided the necessary specialty tools, equipment, parts, and the property. The worker used his personal tools. He did not lease space or equipment, or incur expenses in the performance of his services. The firm paid the worker according to the hours invoiced by the worker. It covered the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business. Other than tool replacement, the worker did not run the risk of incurring a financial loss beyond the normal loss of compensation.

Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker did not advertise his services or provide similar services for others during the same time period.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, the firm's 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. If a firm has to make a worker "understand" or even if a worker "agreed to" being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker's status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm provided the training resources. It is only reasonable to assume that it 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 scheduled the inspections performed by the worker. The worker performed his services on the firm's premises. 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. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker furnished his personal tools. 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. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He was not engaged in an independent enterprise, but rather the trailer repair and inspection services performed by the worker were a necessary and integral part of the firm's structural steel fabrication business. 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. Neither party incurred a liability when the work relationship terminated, indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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 for all services, and not an independent contractor operating a trade or business.