

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.161 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

Information provided indicated the firm is a construction business. The worker performed services for the firm from 2011 through 2015, performing painting/drywall repair services. The firm has reported the income on Form 1099-MISC stating the worker works for himself, other firms and other individuals. No additional documentation has been provided to substantiate that information. The firm indicated the worker was given safety briefings. The firm stated work assignments were dispatched when the worker is on site or by phone. Both the firm and worker determine how the work is performed. The firm stated his immediate supervisor or the person requesting work would resolve issues. The worker was required to submit timesheets. He would arrive at the workplace at seven-thirty and work five to eight hours per day, twenty-five to thirty-five hours per week, as requested. Services were performed at the firm's customer locations. The worker is required to perform services personally. The firm has indicated they provided all materials, tool replacement and gas. The firm stated the worker was paid by the hour plus gifts of materials or money. He was given paid holidays, personal days as well. The customer paid the firm. The firm indicated they did carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The firm indicated he was represented as a sub-contractor. The firm indicated the worker quit.

The worker indicated he was a skilled tradesman, so no additional training was required. He was given written work orders from the firm. Either the company owner or its supervisor determined how the work was performed and resolved any issues that came up. The worker agreed he provided time sheets. He agreed he reported to work at seven-thirty am and worked until four pm. Any deviation from that work schedule had to be preapproved. Services were performed at the firm's customer locations. He indicated daily/weekly staff meetings were held. He agreed he was to perform his services personally. The firm provided building materials and various tools. He indicated he did provide some hand tools. The worker agreed he was paid by the hour and given a forty dollar per week gas and tool allowance. The customer paid the firm. The worker indicated he was given Veteran's Day off as a paid holiday, and bonuses. Either party could terminate the work relationship without incurring a penalty or liability. He worked full time for the firm, he did not work for others. He was given company shirts they were required to wear. He was represented as an employee of the firm. He stated he resigned to relocate.

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

-A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The worker performed services for the firm 2011 through 2015.

Analysis

-The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

-If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. (The firm indicated the worker performed services twenty-five to thirty-hours per week, that constitutes full time work).

-Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The firm obtained all jobs, instructed the worker which location they would be performing services, on a daily basis. If the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

-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.

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.

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.

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. Information provided shows the worker performed services on a full time continuing basis for the firm. The worker was paid by the hour, given paid holidays, bonuses, gas/tool allowance, and company uniforms. All indications of an employee/employer work relationship. The firm obtained, controlled and assigned the work orders. The worker performed services as instructed by the firm or its supervisor.