

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.162 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

The payer is in the business of construction and metal building erection. As the payer, you engaged the worker to perform all phases of constructing a metal building. You did not withhold taxes from the worker's remuneration for 2011, 2015, and 2016.

Information from the parties supports that you provided the worker with instructions in loss prevention and overall safety, and points of expertise. The parties discussed the work at hand, chose the method, assigned each task, and worked together. If problems or complaints occurred, the worker contacted you for resolution. The worker normally worked eight hours a day, five days a week when work was available and weather permitted. The worker generally performed his services at your customers' locations. The worker was required to perform his services personally.

You provided all tools and transportation. The worker provided his steel-toed boots, gloves, and appropriate clothing. You paid the worker at an hourly rate. You did not cover him under workers' compensation. Customers paid you directly at prices you established. Neither party indicated an investment by the worker in your business or a related business. The worker's risk of loss involved damage to his clothing and personal protective equipment, or possible loss of income due to personal injury or short-term sickness.

You did not make general benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The worker did not advertise his services or provide similar services for others during the same time period. You represented the worker as a sub-contractor.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you trained the worker. You were responsible for resolving any problems that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker followed the schedule that you set. He performed his services at your customers' locations. 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 you 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 you 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 provided his clothing, shoes, and safety equipment. 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you 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 was not engaged in an independent enterprise, but rather the construction services performed by the worker were a necessary and integral part of your construction/metal building erection 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. Although you did not provide benefits to the worker, when the work relationship terminated, neither party incurred a liability, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.