

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.166 Lardborer/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 providing home appliance and repair services. The worker was engaged as a laborer/plumber who performed plumbing work as well as assisted with furnace installations. He received a 2013 and 2014 Form 1099-MISC for his services. There was no written agreement.

The firm noted that it provided supervision and on-the-job training for furnace and A/C installation. The worker noted that the customers called the firm; the firm then assigned him to the jobs. He required no supervision for plumbing work. Both parties agreed that the firm determined the methods by which the assignments were performed with the firm adding that the worker did as well depending on the job. Both also agreed that the firm would be contacted if any issues or problems arose. The worker noted that he reported his hours to the firm and he would be paid accordingly. Both parties agreed that there were no set hours as the work schedule was dependent on the work obtained. On some days, the firm would pick up the worker who would assist with a job. The worker would do only plumbing jobs on his own. Both parties agreed that all the services were performed at the customers' locations. There were no meetings. Both parties agreed that the worker was required to provide his services personally. Only the firm would hire and pay any substitute workers.

The firm provided supplies, equipment, materials, and tools. The worker added that the firm provided a van also. Both parties agreed that the worker provided most hand tools. Both also agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. Both agreed that the firm paid workers' compensation insurance on the worker. The firm established the level of payment for services, except for some limited plumbing jobs according to the firm.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. The worker provided his services under the name of the firm; however, the worker noted as an employee and the firm noted as an assistant. The relationship has ended. The firm now operates on a part-time basis only. The worker found another job.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. It is acknowledged that the worker had plumbing experience and skills. While he did not need training or supervision for those tasks, the firm provided the worker with some supervision and on-the-job training for other services in which he assisted the firm. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker performed his services according to the firm's scheduled work hours and days, based on work obtained by the firm. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control; however, 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. The worker would need to adhere to the firm's schedule with its customer.

In addition, the worker provided his services on a continuous basis throughout the time period involved. 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.

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. It was the firm that had the investment in the work vehicle, equipment, material, and supplies. The worker simply received an hourly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was engaged to provide labor either as an assistant or as a plumber, dependent on the jobs obtained by the firm. When doing so, the worker was not engaged in an independent enterprise but instead, his services were part of the necessary activities of the firm's business operations. 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.

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 see Publication 4341 for guidance and instructions for firm compliance.