

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.173 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

Information provided indicated the firm is a contract geotechnical exploration drilling and sampling company. The worker had been retained from 2010 through 2015 to provide carpentry, truck driving, and labor assistance in the field operations. The worker performed the same services for [REDACTED] until it was sold to the partnership [REDACTED]. That income was reported on Form W-2. The firm stated the worker only worked when his schedule allowed. He billed for his time as [REDACTED]. He signed a statement stating he was an independent contractor. Copies of both have been provided. The firm stated he was given periodic site safety training at "tailgate meetings." He was called by a project supervisor to see if he was available to assist. Who determines the method by which the assignments were performed, dependent on the task i.e. [REDACTED]. He would report to the project supervisor who asked for assistance. He provided his billing invoices. (it indicated he was paid \$20.70 an hour) The work schedule depended on task. For carpentry he set his own schedule according to when the business was open. Services were provided on the firm premises, driving and at customer locations. He was to perform his services personally. The firm hired and paid all workers. The firm provided the vehicles and some special hand tools. He provided tools of his trade. The firm reimbursed for motel and food expenses. He was paid an hourly rate, determined by the worker. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as part of the [REDACTED] team, along with other subcontractors. The firm indicated the worker took on more work for others.

The worker stated he never contracted any work with the firm; he was always paid by the hour. He was told when to come in for work and when to get off work. Work assignments came from supervisors [REDACTED] (driller) and [REDACTED] (vice President) [REDACTED] (head driller). They are responsible for resolution of any issues. He provided his hours worked [REDACTED] log book & vehicle inspection reports. He indicated the firm provided the invoice forms, (with the company name they instructed him to come up with) which he completed with the worked performed and the hours worked. He worked various hours, mostly out of town, the firm paid for motels and meals. Services performed at the firm's location and various drill sites in the tristate area. He was required to attend mandatory quarterly meetings. He was to perform his services personally. The firm provided all safety equipment, shirts, gloves etc. He also provided sturdy clothing. He was paid by the hour. He agrees the customer paid the firm. He was also given bonuses. He indicated he quit.

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 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.

Analysis

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 b

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.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. 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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments.

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.