

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.178 Tradesperson

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

Facts of Case

The worker requested a determination of employment status for services performed for the firm in 2013-2016 as a laborer. The worker is a plumbing company and responded to the request. The firm stated that the worker originally used his own truck and tools. In 2014 he was put on payroll and used the firm's truck. In 2015 the company had some financial issues and the worker was changed back to an independent contractor. This continued until some time in 2016 where the worker was changed back to an employee. The worker performed the same services for the firm throughout the relationship. The worker personally performed his services as a representative of the firm. The worker had no risk of loss.

Analysis

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. Therefore, a 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.

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. 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. 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 beginning of the relationship.

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. The worker personally performed his services as a representative of the firm to the firm's customers.

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. The worker had no investment and no risk of loss.

The worker is determined to be an employee of the firm for the entire relationship.

Firm: For more information please go to www.irs.gov Publication 4341