

## SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.179 Tradesperson

UILC

Determination:

☒ Employee

☐ Contractor

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the business of providing new construction framing. The worker was engaged for basic framing and general labor services. He received a 2014 Form 1099-MISC for his services. There was no written agreement.

Both the firm and the worker agreed that there was no training and that the firm gave the worker verbally, his daily assignments. The worker noted that he was told what to do and how to do it. Both parties agreed that the firm determined the methods by which the assignments were performed and would be contacted if any problems or issues arose. There were no required reports. According to the worker, he worked set scheduled hours, framing, with a break and lunch. The firm however noted that he could come and go as he pleased. He worked at the firm's customers' job sites. There were no meetings. The worker was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided tools, materials, and work trailers. The worker supplied small hand tools. Both agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others during the same time period though the firm disagreed. The relationship has ended.

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## Analysis

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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 was the firm that obtained the jobs and engaged the worker for his labor. While the firm indicated that the worker could come and go as he pleased, that was not reasonable as the framing would need to be done prior to other work continuing; it was the firm that was obligated to the customer. The worker was told what to do, where to go, and when he was needed, even if his work schedule was irregular. 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.

In addition, the worker provided his services on a continuous basis throughout the time period involved, even if he worked only when needed and when work was available. 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 materials, tools and equipment. 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 provided general and framing labor for the firm's business operations which provided those services. When doing so, the worker was not engaged in an independent enterprise. His services instead 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.