

## SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.185 Laborer/Trades

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the business of home renovations and cabinetry. The worker was engaged by the firm to help with renovations. The firm did not withhold taxes from the worker's remuneration in 2014 and 2015.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The firm provided the worker with his work assignments and assisted him in determining the methods by which to perform them. If problems or complaints occurred, the worker contacted the firm owner or his supervisor for resolution. He was not required to submit reports as a supervisor was always on site. The firm stated that the worker made his own schedule and performed his services wherever he could find work. The worker was required to perform his services personally.

The firm provided the location of work and reimbursed the worker for any purchased materials. The worker provided his own tools. The firm stated that the worker worked up prices, but it did not submit any bids the worker may have prepared. The firm covered the worker under workers' compensation. Customers paid the firm directly at prices established by the firm. The worker risked the loss of payment, and loss or damage of equipment and materials. He was responsible for any mistakes. Neither party indicated an investment by the worker in the firm or a related business.

The firm did not make benefits available to the worker. The firm did not prohibit the worker from providing similar services for others during the same time period; however, he was required to obtain the firm's approval. There is no evidence presented showing the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the firm terminated the work relationship.

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## Analysis

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Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, the firm's 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 was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform his services, the worker worked under supervision, showing 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 and ensure its customers' satisfaction with the work. The worker provided his services according to the firm's needs. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm 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 the firm 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 personal tools. 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. The firm paid the worker by the job, and the risk of loss was absent. These facts show that the firm 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 performed his services under the firm's name. He was not engaged in an independent enterprise, but rather the services performed by the worker as an assistant were a necessary and integral part of the firm's renovation and cabinetry 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. The worker could have performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the firm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

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.