

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.188 Tradesperson	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 business as a general contractor. As the owner of the firm, you engaged the worker to perform carpentry services. You reported the worker's remuneration on Forms 1099-MISC for 2014 and 2015.

It is our usual practice in cases of this type to solicit information from both parties involved. We requested information from you concerning this work relationship. Because we received no relevant information regarding the relationship, we are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination.

The worker stated that you issued him daily work assignments in person or through supervisors. You determined the methods by which the worker performed his services. If problems or complaints occurred, you were ultimately responsible for their resolution. The worker generally followed a routine schedule. He performed his services on your job site. The worker was required to perform his services personally. If additional personnel were needed, you were responsible for hiring and compensating them.

You provided the power tools, lumber, and fasteners. Other than providing his personal hand tools and safety equipment, the worker did not incur expenses in the performance of his services. You paid the worker at an hourly rate. You covered him under workers' compensation. The worker did not indicate an investment in your firm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. There is no evidence presented showing the worker advertised his services or maintained a business listing. The worker stated that he did not provide similar services for others during the same time period. The work relationship ended when the job was completed.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you provided the worker with his work assignments and the methods by which to perform them. You were ultimately responsible for resolving any problems or complaints that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The worker followed a routine schedule and performed his services on your job site. 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. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for your 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 you 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 bid on jobs, 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 and safety equipment. 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you 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 was not engaged in an independent enterprise, but rather the carpentry services performed by the worker were a necessary and integral part of your firm's general contracting 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. Although you did not provide benefits to the worker, both parties retained the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.