

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.191 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 indicates the firm is an electrical contractor. The worker has performed services for the firm since 2013. The firm had reported income on Form W-2 up until 2016. (with the exception of a 1099-MISC issued in 2013). The firm indicated the job changed in 2016 in that he was used exclusively for small business energy program jobs (removing old and installing new LED fixtures (which were supplied by the general contractor). The firm stated the new status was discussed thirty (30) days prior to the change. Prior to the change the firm stated the worker had utilized the company van and tools and had paid vacations. The firm stated in 2016 the worker was paid based on the scope of job and was fully independent. There was a verbal agreement only, backed up by change in pay, duties and scope of work. He was now paid by per fixture installation. Checks were no longer drawn from the payroll account, he no longer worked daily.

The firm stated no training was given, the only instruction was where the job site was and types/numbers of lighting fixtures to be installed or replaced. Work assignments were given primarily by phone. The firm stated the worker ran the jobs with another (independent contractor). Problems with fixtures he would contact the general contractor, with installation he would contact the firm. Each job had a deadline, after that he set his own schedule and work to complete by the deadline. The firm hired and paid all workers.

The firm stated they provided materials. The worker provided his own tools and vehicle and fuel. A third party provided all the fixtures, lift, ladders, scaffolding etc. The worker did not lease materials. In 2016 the worker was paid on a per fixture basis. The firm stated the general contractor /trade ally was paid for the work performed. The firm stated they determined the rate as a subcontractor has the contract with /payment terms with the general contractor/trade ally.

Either party could terminate the work relationship without incurring a penalty or liability. He was represented as an independent contractor working for [REDACTED] the firm stated trade ally program awards ceased, therefore the firm no longer received contracts from general contractor/trade ally.

The worker contends there were no changes in services. He indicated he received the same take home pay in 2016 as he did in the prior years after taxes. (Copies of checks issued in 2015 and checks issued in 2016 verify this). Overtime was turned into "comp" time. He stated h was paid by the hour. He was told it was due to accounting issues. The firm set up all work orders. He indicated there were no changes in services. He continued to use the company van and wear the company uniform. He agreed he provided his basic hand tools. He agreed he was laid off due to lack of work.

ANALYSIS

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 parties.

Analysis

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 continued 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. As indicated by the firm, they held the contract with the energy company to provide installation services of the LED units to their customers. Thus the firm would have stood to suffer the financial loss, if the workers he provided did not fulfill the work promised to the general contractor/trade ally. The worker continued to perform services under the firm's business name, wearing the company uniform. Documentation shows he continued to receive the same weekly pay (indicating deductions were still being withheld) as when he was paid via the payroll account. The fact the worker used his own vehicle and hand tools does not constitute a financial investment.