

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.1 Overseer	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 the business of delivery, set up and services to mobile homes and mobile office trailers. The worker provided his services to the firm in 2010 and 2011 as a site supervisor beginning his duties answering to the site supervisor, and was eventually promoted to the site supervisor in charge of the sub-contractors. He received the Forms 1099-MISC form the firm for these services.

The worker stated that the firm provided him with specific instructions on every aspect of every facet of all the work performed. The firm reported that the worker was already skilled. The worker received his assignments either by telephone or in person from the firm's owner and the firm's owner determined the methods by which the assignments were performed. The firm indicated that the worker determined the methods by which the assignments were performed. If problems or complaints arose, the worker was required to contact the firm's owner and the firm's owner was responsible for problem resolution. The firm expressed that the worker along with the firm was responsible for problem resolution. The worker stated that the firm required the worker to submit time sheets at the end of each week with detailed descriptions of the work performed. The worker's schedule varied; he reported at the designated time, was told what tasks were to be performed on that day, instructed how to perform the tasks, what materials were needed, load the company vehicles and materials, and work that task until directed otherwise. He provided his services personally on the firm's premises for 10% of the time, and the firms' customers locations for 90% of the time. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; concrete block, skirting, wood, nails, screws, tie down straps, vehicles, fuel, plastic, plumbing, and electrical supplies. The firm reported that the worker provided the transportation, labor, and tools. The worker maintains that he did not lease any equipment nor were any expenses, other than food, incurred in the performance of his services for the firm. The firm stated that the worker incurred expenses such as; transportation, food, hotels and tool maintenance while performing his services for the firm. He received an hourly wage for his services. The firm's customers paid the firm for the services the worker provided. The worker stated that the firm established the level of payment for the services he provided while the firm contends that the worker established the level of payment for the services he provided. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker, but the worker affirmed that he did receive bonuses. The worker did not perform similar services for others during the same time period. The firm contends that the worker did provided similar services to others during the same time period. The worker stated that he performed his services under the firm's business name. The firm reported that the worker provided his services under his own name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of his services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. Although the worker may determine his own methods to complete his work assignments, we believe the firm retained the right to change his methods to protect their business interest. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered his services personally. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Furthermore, the fact that the worker has an investment in hand tools is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. His pay was based on an hourly rate. 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. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. 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.

The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Either the firm or the worker could terminate the agreement. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.