

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.14 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's business provides siding and window installation services. The worker was engaged to perform services as a Quality Control Supervisor. The firm treated the worker status as both independent contractor and employee. The firm issued to the worker Forms 1099-MISC and Form W-2 at year-end to report the monies received for his services as wages and non-employee compensation.

The worker received safety training, forklift, and boom lift training, and received CPR and First Aid certifications. Once a project started, the firm provided instructions to the worker according to the contract with the builder/developer. The firm and worker both determined the work methods by which to perform the services. The firm was contacted regarding problems and complaints that needed resolution. The worker was required to provide power point reports with pictures. He was required to perform his services personally. The worker performed his services from his office at the firm's headquarters' location, and from his home office from which he prepared reports for the firm. He also performed services at job sites. The firm required the worker to attend staff meetings, end of month board meeting, meetings called by the firm's vice president and president, and he attended weekly construction meetings at the job sites.

The firm provided the worker with a desk, computer, paper and supplies for his home office, uniforms, a fuel card, and a telephone. The worker provided his vehicle. The worker did not incur work related expenses; all expenses were reimbursed by the firm. The worker received payment for his services on a salary basis. The firm indicated that the worker submitted invoices to them for payment purposes. There was no information provided to evidence that the worker incurred economic loss or financial risk related to the services he performed for the firm.

There was no information provided to evidence that the firm carried workers' compensation insurance on the worker, or that employment benefits were made available to the worker. There was no information provided to evidence that the worker performed similar services for others, or that he advertised his services to the public, while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location, on job sites, and at the worker's residence. The worker used the firm's tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov