

SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.52 Overseer

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a homeowner's association of 55+ condominiums which engaged the worker as a live-in superintendent in 2007 and from 2009 to 2016. This was pursuant to several agreements between the parties stating the worker was to provide cleaning services, landscaping and snow removal services at the firm's residential premises.

The worker did not receive training from the firm. However, the firm did provide the worker with specific written instructions as to the details and means by which the worker was to perform the services. He worked 5-7 days a week, 5 hours or more per day depending on the needs and demands of the firm's customers. The worker initially received regular bi-weekly remuneration for his services, later the income was issued in monthly payments. The worker was required to have a dress code per the firm's contract while performing the services. Also, those contracts furnished by the firm indicated the firm determined the methods by which the assignments were performed. The firm's board of directors were responsible for problem resolution. The worker's performance was evaluated annually by the firm's customers regarding his services. The worker was not required to submit reports, instead met with everyone for everything in person; board of directors, the firm's customers, fire marshal and contractors for repairs. He performed the services on the firm's premises, for the firm's customers. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker stated he was required to perform them personally. In addition, the agreements between the firm and worker dictate the worker is to perform the services personally. There is no evidence provided by either party suggests anyone else other than the worker provided these services to the firm during this period. The worker worked exclusively and on a continuing basis for the firm. His services were an integral and necessary part of the services the firm provided to its customers.

The worker leased a unit at the firm's premises prior to the ownership of the association. The worker did not furnish any of the tools or equipment used in performing the services, except for a lawn mower and weed whacker. The firm determined the fees to be charged to its customers. The worker incurred significant business expenses for materials and supplies used for maintenance and was reimbursed by the firm. The worker was paid a salary, and as such, was guaranteed a minimum amount of compensation. The firm's customers paid the firm. The contracts between the worker and the firm stated the worker was supposed to possess liability insurance while providing services to the firm. The worker stated he did obtain general liability insurance some of the years he provided services for the firm but not all years. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. It was recognized by both parties that the firm had preferred call on the individual's time and efforts. All work produced became the property of the firm. The worker did not perform the services for others. He did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the firm terminated the worker resigned.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials to the worker. The worker could not incur a business risk or loss. The worker was paid a salary. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's control over the worker's services and the worker's integration into 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. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. 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.