

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.6 Manager

UILC

Determination:

☒ Employee

☐ Contractor

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is in the business of rental properties. The worker provided his services to the firm in 2007 through 2011 performing 24/7 on call services as maintenance and property management and received the Forms 1099-MISC for these services.

The worker stated that the firm instructed the worker to do all the tasks the job required such as; permission to do specific maintenance, and the firm also required authorization for all necessary materials. The firm contends that there was no training or instruction provided. The worker received his assignment from the firm and the firm 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 supervisor and the firm's supervisor was responsible for problem resolution. The firm maintains that both the firm and worker resolved any issues. The firm required the worker to submit daily reports on work performed, and the hours worked. The worker's schedule varied; he was on call 24/7 working an average of 60 hours per week on property maintenance, and any other duties the firm requested; such as packing up and evictions. The firm added that upon the worker's arrival he commenced to do repairs. He provided his services personally on the firm's premises. If additional help was required, the worker expressed that the firm hired and compensated the helpers.

The worker stated that the firm provided all the necessary supplies and equipment the worker needed to provide his services. The firm reported that the worker supplied tools. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. The firm stated that the worker received an hourly wage for his services. The worker maintains that the firms' customers paid the firm for the services he provided. The firm established the level of payment for the services provided by the worker. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker. The worker did not perform similar services to others during the same time period. He provided his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. In fact, 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. 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. 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. 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. 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. 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 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.

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. 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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. 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. 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. 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. Either the firm or the worker could terminate the agreement.

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.