

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.38 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in the business of producing and selling products in the healthcare field. The worker was engaged by the firm to perform production and customer services such as deliveries, assembling parts of products, shipping services, and other tasks as assigned. The firm reported the worker's remuneration on Form 1099-MISC for 2013.

Information from the parties supports that the firm provided the worker with the standards the worker was required to meet. It trained him on the use of its shipping software. The firm provided the worker with his work assignments. He performed his services according to the firm's expectations. The firm contacted the worker when issues needed to be corrected. The worker submitted reports of the hours he worked and his mileage, and reports of products produced. The worker generally followed a routine schedule. He performed his services on the firm's premises, in his home office, and traveling as needed. The worker was required to perform his services personally.

The firm provided the raw materials for production, specialized equipment, and provided the worker with a computer, if needed. The worker utilized his vehicle, computer, gloves, and protective equipment/clothing. He did not lease equipment or space. The worker incurred fuel, insurance, and phone costs. The firm reimbursed him for mileage and other miscellaneous costs. The firm paid the worker at an hourly rate. Customers paid the firm directly at prices established by the firm. The firm did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. It did not prohibit him from providing similar services for others during the same time period. There is no evidence that the worker advertised his services or maintained a business listing. He provided his services under the firm's name. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the firm terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm trained the worker. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker submitted reports of time worked, mileage, and products produced. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker utilized his vehicle, computer, and protective clothing. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He performed his services under the firm's name. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. 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 could have performed similar service for others during the same time period; 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. Although the firm did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm had the right 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.