

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.45 Manager	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 a used car auto dealership in the business of used auto sales. The worker provided his services to the firm as a general manager purchasing the used vehicle inventory, hired, fired and trained the firm’s sales staff, sold cars, was solely responsible for the financing of cars and deals between the banks in 2008 through 2014 and received the Forms 1099-MISC for these services.

The firm instructed the worker to do all the tasks the job required. The worker received some assignments from the firm’s owner such as attending car auctions, and the worker usually assigned the work assignments to the firm’s other workers. The firm and 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 owner was responsible for problem resolution. The firm required the worker to submit the financial report, licensing and titling of cars, and the customer credit applications daily. The worker had a set schedule generally working from 9:00AM until 9:00PM or until the firm’s customers were gone. Additionally, the worker was required to attend the car auctions. He provided his services personally on the firm’s premises. 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. The worker did not lease any equipment and was reimbursed by the firm for any business expenses incurred in performance of his services such as; fuel for cars, cell phone, required software, Saturday sales lunches, and supplies. He was paid a salary for his services and an occasional bonus for car sales at the owner’s expense. The firm’s customers paid the firm for the services the worker provided. The firm established the level of payment for the services the worker provided. The worker did not assume any financial risk in the relationship.

The firm provided the worker with personal days, paid vacations, sick pay, paid holidays, and a company car. The worker did not provide 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 worker received a text message stating that because the firm had plans to restructure, his services were no longer needed.

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. 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 facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. 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. His pay was based on salary. 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 establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. 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. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. 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. 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. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. In fact, the relationship ended when the worker was let go. Either the firm or the worker could terminate the agreement.