

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.101 Manager

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The worker initiated the request for a determination of his work status as a resident manager of a storage facility in tax years 2012 through 2015. The firm's business is described as a storage facility with supplemental [REDACTED] rentals and rental of parking spaces for larger items such as RV's or boats and the sale of incidental storage and moving supplies.

The firm's response was signed by one of the owners. The firm's business is described as a storage facility. The worker performed services as a resident manager of the storage facility.

According to the firm, no specific training or instructions were given to the worker. There was no assigned work; the worker knew what he was contracted for. The job assignments were spelled out in the written agreement. The worker was required to rent storage units, market the business, assist customers by taking payments and renting units. Periodic reports of rents collected were provided to the firm so that they could forward it to their bank. The worker determined the methods to be used to perform his job duties. The owner was contacted regarding any problems or complaints, if worker could not resolve the issues. The services were rendered on the firm's premises. The worker was required to perform the services personally; no substitutes were hired or paid.

The worker responded that he was given one week of training and instructions by the prior manager, which included office processes, software, credit card processing, and online training for [REDACTED] rentals. The worker indicated the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. He concurred that the services were rendered on the firm's premises and that he was required to perform the services personally.

The firm provided all office and maintenance supplies needed to operate the business. If the worker needed to purchase something, he was reimbursed by the firm or from petty cash with receipt. Both parties acknowledged that the worker did not lease equipment, space, or facilities and did not incur expenses in the performance of the job. Under the agreement he was provided living quarters on the premise without a monthly payment for rent or utilities. The firm paid the worker a salary and a commission; the customers issued payment to the firm. The worker was not covered under the firm's workers' compensation insurance policy. Both parties agreed the worker was not at risk for a financial loss in this work relationship. The worker did respond that the firm established the level of payment for services provided or products sold.

The parties agreed that benefit of bonuses was extended to the worker; the worker stated he also received paid holidays and paid vacations. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker did advertising for the firm as part of his responsibilities.

Analysis

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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. In this case, 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.

CONCLUSION

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.