

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.133 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

According to the information and documentation submitted, the firm's business is distribution of [REDACTED]. The worker performed services as a operations manager, managing the day to day operations of the firm's warehouse during 2009, 2010, and 2011. The firm reported the worker's earnings on Form 1099-MISC at year end in all three years. The firm also reported earnings to the worker on Form W-2 in 2009 and 2011.

The worker performed his services at the firm's location. The firm provided the worker with training. The firm provided the worker with his work assignments via phone or email. The worker provided shipping and receiving reports to the firm. The firm paid the worker a salary for his services and provided the worker with worker's compensation insurance. The worker also received benefits such as paid holiday, paid vacations, and sick pay. The worker was terminated from his services without either party incurring any liabilities.

Analysis

According to the information and documentation submitted concerning the work relationship, the worker personally performed his services at the firm's location. The firm provided the worker with training and his work assignments. The worker provided reports to the firm. The firm paid the worker a salary for his services and provided other benefits. The worker had no investment in facilities providing similar services and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities.

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.

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 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.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.