

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.135 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 residential solar system sales and installation. The worker performed services as a sales representative, from February 2013 to March 2014, and promoted to a sales manager, from March 2014 to April 2015. The worker's duties included holding daily sales meetings, supervising and managing the sales team, hiring and training sales reps, working with the production team to make sure jobs were installed on schedule, and assisting other sales representatives. The firm reported the worker's earnings on Form 1099-MISC at year end.

The services were performed pursuant to a "2013 Independent Contractor Commission Structure and Fees". The [REDACTED] provided the amount of commission that the worker would earn based on sales. The [REDACTED] also provided opportunities for the worker to earn additional commissions on sales if they were above a monthly sales target. The Commission Structure provided that the worker pay fees, such as for licenses, and it provided requirements such as when the worker should deliver sales documents to the office and the worker having a cell phone. The worker also had the opportunity for earning bonuses.

The worker performed the services at the firm's office or in the field running scheduled sales appointments. The firm provided the worker with leads to the prospective clients through the Marketing Department. The firm provided the worker with the sales information for its products and determined the level of payment for the services. The worker provided the sales documents to the Finance Department for approval. The firm's customers paid the firm for the products and services.

The firm's [REDACTED] provided the worker with a Prius according to certain conditions. The worker was required to pay monthly fees to the firm. The fees were dependent on the amount of sales made in the past months with the greater the sales the less fee was paid. There was also requirements for use of the vehicle, such as no smoking and business use only.

Analysis

According to the information and documentation submitted concerning the work relationship, the firm provided the worker with training on its solar system product. The firm provided the worker with his assignments and leads. The worker performed his services on a continuous basis starting as a sales representative and being promoted to sales management.

The firm provided sales supplies for the worker to perform his services. The firm established the level of payment for its services and provided a structure for the worker to earn commissions. The worker was also provided with a car; with the firm establishing the fee paid based on the level of sales the worker made. The worker had no investment in facilities and did not have the opportunity for profit or loss. Both parties could terminate the services without incurring any liabilities.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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.