

SS-8 Determination—Determination for Public Inspection

Occupation 07ESW.3 Enforcement/Security	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is in the business of providing security guard services. The worker was engaged as a security guard to provide those services as advertised by the firm. He received a 2013 Form 1099-MISC. There was no written agreement.

The worker received first aid training as well as Low Oxygen and CPR training from the firm. The firm noted that training was provided but through other parties. The firm gave the worker his job assignment though the firm indicated that another security company was also involved. The worker noted that the company he was placed with determined the methods of assignments; the firm agreed. The firm noted that the worker was required to contact them if any problems arose for resolution; the worker named various contacts at the customer site, at the other security company and at the firm. Both the firm and the worker agreed that the worker submitted incident reports if needed. He worked set scheduled hours that varied; the firm agreed. The worker worked at the customer's locations. Both parties agreed that the worker was required to provide the services personally with only the firm hiring and paying any substitute workers.

According to the worker, the firm provided the radio; however, the firm noted that it provided only the uniform. The worker indicated that he provided the uniform as he had to pay the firm for it. Both parties agreed that he was paid an hourly rate and had no other economic risk. Both also agreed that the customer paid the firm. The firm noted that it carried workers' compensation insurance on the worker. Both agreed that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. Both parties agreed that the worker performed his services under the firm's name. An employment verification letter was provided to the worker from the firm. The relationship ended when, according to the worker, he quit.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm advertised that the security guards it provided were screened, interviewed, and trained. Evidence was provided showing that the firm assigned the worker to the customer and scheduled his hours as well. He was to call in at the start of his shift and was to be there for a specific time before his shift began. 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 worker received training in specific areas and was to provide the services personally. This was understandable. 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. In addition, 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.

Factors that illustrate whether there is 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. The worker simply received an hourly rate of pay and had no other economic risk. 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. The worker was a security guard engaged by the firm that provided security guards to other businesses. He was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the firm's operations. 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.

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.