

SS-8 Determination—Determination for Public Inspection

Occupation

09CME.10 Crew Member

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a trucking business. The firm engaged the worker through an application process to perform dispatching services. The worker stated the firm provided training and instructions on paperwork and job expectations. The firm assigned the worker jobs to perform per the worker and determined the methods used by the worker to perform the services. The firm indicated no training, instructions or assignments were given. The firm was required to be contacted for resolution to problems or complaints. The firm did not require any reports from worker. The worker performed services during firm established hours per the worker and at the firm's place of business. The firm required the worker to perform the services personally.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker a salary on a weekly basis per the worker and the firm indicated commissions with a guaranteed weekly amount. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk per the worker the firm did not answer the question.

There were no contracts. The worker did not perform similar services for others. The worker did no advertising to the public as being engaged in a business. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker to perform dispatching services for the firm's business operation. The firm assigned the worker services to perform and provided the necessary training and instructions to perform the services according to the firm's business expectations. The firm determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm determined the worker's work schedule. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's place of business. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a commission basis and guaranteed a minimum amount. The customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's place of business under the firm's business name on a regular and continuous basis over several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination 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 without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.