

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.76 Truck Driver

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The payer is the firm's client and is in the business of trucking. The worker provided her services to the firm as a truck driver, driving a tractor trailer both locally and over the road in 2011 and 2012 and received the Forms 1099-MISC for these services.

The worker received her assignments from the payer and the firm who dispatched her, and both the payer and the firm determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the payer and/or the firm and they were responsible for problem resolution. The worker was required to submit daily log books and a trip sheet. Her schedule varied; she worked day and/or night as needed, sometimes local, and other times she was on the road for two to three weeks. The payer agreed that the worker was able to pick and choose her work each day. The worker provided her services personally using the firm's truck which is stored on the firm's premises. If additional help was required, the firm hired the helpers and the payer compensated the helpers.

The payer provided all the necessary supplies and equipment the worker needed to provide her services such as the truck, EZ pass, qualcomm for dispatch and e-logs, diesel, and oil. The firm provided the fifth wheel puller, toll pass, trailer, and various items given at meetings. The worker provided her work gloves, boots, and personal items for inside the truck. The worker did not lease any equipment and was reimbursed by the payer for any business expenses incurred in the performance of her services including; the tolls, any lights or minor items for safe operation of the truck, and scale tickets. She received remuneration for every loaded trailer hauled. The payer stated that she was paid by mile/contract. The firm's customers paid the firm who then paid the payer for the services the worker provided. The payer established the level of payment for the services the worker provided.

The firm made available health coverage for the worker. The worker did not perform similar services to others during the same time period. She stated there was a contract between the payer and the firm which did not allow her to work for another trucking company while with this firm. She provided her services under the payer's business name. Both parties retained the right to terminate the relationship without incurring liability.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The worker had the necessary skills to perform her services therefore it was not necessary for the payer to provide training. The payer retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. 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. The facts show that the worker was subject to certain restraints and conditions that were indicative of the payer's control over the worker. 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 worker had a continuous relationship with the payer as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker rendered her services personally. 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. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the payer's supervision.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The worker could not have incurred a loss in the performance of her services for the payer, and did not have any financial investment in a business related to the services performed.

The worker worked under the payer's name, and her work was integral to the payer's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Either the payer or the worker could terminate the agreement. 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. In fact the relationship ended when the worker quit.

Based on the common-law principles, the payer had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.