

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC.89 Driver	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

The firm is in the business of auto sales. The worker was engaged by the firm as a driver. The firm reported the worker's remuneration on Form 1099-MISC for 2013. In 2014, it reclassified the worker to an employee and reported his wages on Form W-2. There is no indication that the worker's services changed when the firm reclassified the worker from an independent contractor to employee status.

Information from the parties supports that the firm did not train or instruct the worker. The firm provided the worker with his work assignments. The worker followed the schedule set by the firm. If problems or complaints occurred, the worker contacted the firm for resolution. The worker was required to perform his services personally.

The worker did not incur expenses in the performance of his services. The firm covered the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. It did not prohibit the worker from performing similar services for others. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker did not advertise his services or maintain a business listing.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm provided the worker with his work assignments. It is only reasonable to assume that it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker followed the schedule set by the firm and performed his services at locations it specified. 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. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for the firm on his behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He performed his services under the firm's name. The worker was not engaged in an independent enterprise, but rather the services performed by the worker as a driver were a necessary and integral part of the firm's car sales business. 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. Although the firm did not provide benefits to the worker, both parties retained the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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 for the entire work relationship, and not an independent contractor operating a trade or business.