

SS-8 Determination—Determination for Public Inspection

Occupation 03IEI. InspectorsEstimatorsInvestigators	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

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Facts of Case

The city is a municipal government. The worker was engaged by the city's Public Works Department to perform services as a [REDACTED] Inspector. The city reported the worker's remuneration on Forms 1099-MISC for 2015 and 2016.

The city submitted the "Position Description" stating, among other things, that the contractor position has a flexible weekly work schedule based on project workload, and the worker will perform his services under general supervision. The agreement between the parties states, among other things, the hourly rate of pay for the actual number of hours worked each week, a \$20 per month phone allowance, flexible work hours will vary between 7:30 a m. – 4:30 p m., and the contract can be terminated upon 14 days' notice by either party.

Information from the parties supports that the city relied upon the worker's prior training and experience to perform his services. The [REDACTED] provided the worker with his work assignments and determined the methods by which he was to perform them. If problems or complaints occurred, the worker contacted the Project Manager, Assistant Director, Director, or front office staff for resolution. The worker was required to submit field inspection reports and invoices for payments. He spent the majority of his time in field work within the 6 square miles of the city, but also in the office getting and reporting work. The worker attended the monthly Project Manager's monthly meetings.

The city provided the worker with a tablet, pickup truck, business cards, and an office area with a desk and basic supplies. The worker did not incur expenses in the performance of his services. The city covered the worker under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The city did not make benefits available to the worker. The worker did not advertise his services or maintain a business listing. The worker terminated the work relationship with a two-week notice.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, the city's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the city relied upon the worker's prior training and experience to perform his services, he worked under supervision. The city was responsible for resolving any problems or complaints that may have occurred, showing 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 was required to perform his services personally, meaning he could not engage and pay others to perform services for the city 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 city 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. The city paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the city 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 city's name. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the city's 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 arrangement 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 payer. Although the city did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. 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. These facts show that the city retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the city 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.