

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS Miscellaneous Laborer	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 merchandise in retail stores. The worker provided his services to the firm's customers stocking and sorting lumber in 2014 through 2017 and received the Forms 1099-MISC in 2014 through 2016 for these services.

The worker stated that the firms' customers' area and district managers trained him to do all the tasks the job required. The firm stated that they instructed the worker to complete the work within 36 hours of delivery to the firm's customers and the worker was advised of the safety guidelines. The worker received his assignments from the firm and the firms' customers determined the methods by which the assignments were performed. The firm contends that the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm reported that they required the worker to submit signed support of job completion. A sample of this invoice was submitted by both the firm and worker and is referred to as a Pack Out Invoice which included the firm's name and the firms' customer's name. The worker maintains that his schedule varied. He was called to work when a delivery arrived. The worker performed his services personally at the firms' customers' premises. If additional help was required, the worker indicated that the firm hired and compensated the helpers. The firm expressed that if additional help was required, the worker hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; cart, box cutter, knife, shrink wrap roll, cellophane tape, invoices, and stationary supplies. The firm argues that the worker provided all the necessary supplies and equipment needed to provide his services. The worker did not lease any equipment, nor were any business expenses incurred in the performance of his services. The worker was paid weekly at first, but was switched to piece work for the services he provided. The firm stated that the worker received a lump sum for his services. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship.

The worker received paid holidays, bonuses, and holiday gift cards from the firm. The worker did not perform similar services for others during the same time period. The worker performed his services under the firm's business name. Additionally, the worker submitted a copy of the vendor vest he was required to wear. Both parties retained the right to terminate the relationship without incurring liability. The worker stated that he was terminated, while the firm maintains that the worker quit when presented with performance complaints at one of the firms' customers' locations.

Analysis

FINDING: Employee: 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 his 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 firm trained the worker regarding the performance of his services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. 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 firm 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 his 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. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The customers paid the firm and although the firm stated the worker received remuneration in the form of a lump sum the worker however maintains he was paid weekly at first, but was switched to piece work for the services he provided. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm'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. The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. Either the firm or the worker could terminate the agreement.

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