

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.4 MiscLaborServices	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 commercial real estate rentals. The worker provided his services to the firm in 2011 and 2012 as a janitor performing services such as cleaning, vacuuming, light maintenance, trash pickup and received the Forms 1099-MISC for these services.

The worker stated that the firm instructed him of the work needed to be done, and the order in which it should be completed. The firm contends that there was no training or instruction. The worker explained that he received his daily assignments verbally and the firm determined the methods by which the assignments were performed. The firm added that the worker determined the methods by which the assignments were performed. Both parties agreed that if problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The worker stated that he gave the firm verbal reports of the tools needed, which the firm paid for. In addition, the firm indicated that they required invoices with descriptions, and receipts for out of pocket expenses. The worker's schedule varied; he began his day at approximately 8:00AM, and ended his day when his work was completed. The firm added that the bathroom cleaning needed to be completed between 6:30AM and noon, three times per week at the firms' tenants' request. He provided his services on the firms' premises 100% of the time. If additional help was required, the worker hired the helpers with the firm's approval and the firm paid the worker double and allowed the worker to pay the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; the janitorial supplies, tools and paint. The worker provided the carpet cleaner, but only once. The worker did not lease any equipment and was reimbursed by the firm for any business expenses incurred; such as travel related expenses from one of the firms' properties to another while providing his services. He received an hourly wage for his services. The firm stated that the worker was paid the standard janitorial time rate and materials. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. Furthermore, the worker maintains that the firm established the level of payment for the services the worker provided. The firm contends that the worker established the level of payment for the services he provided.

The worker affirmed that he did not provide similar services to others during the same time period; while the firm indicated that the worker did provide similar services to others during the same time period. He performed his services under the firm'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 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.

Although the firm submitted a Form W-9 believing that this is indicative of an Independent Contractor status, the fact remains that the Form W-9 is simply used as an information document to verify a Taxpayer Identification Number, or a valid Social Security number and has no bearing on the SS-8 determination process. The Form W-9 is also used to indicate that the worker is not subject to "Backup Withholding" Backup Withholding is a specific type of withholding and should not be confused with Federal Income Tax withholding.

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 instructed the worker regarding the performance of his services. 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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the 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. 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 firm's control over the worker. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. However, it is also possible that the individual may be an employee acting in the capacity of a foreman for, or a representative of, the employer. 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. 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 firm's supervision.

The firm provided the worker with the necessary equipment and materials. 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. His pay was based on an hourly rate. If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. 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. 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.