

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.82 RepairMaintenanceWorker	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 business as a cleaning service. As the owner of the firm, you engaged the worker to perform cleaning services. You reported the worker's remuneration on Forms 1099-MISC for 2012, 2013, and 2014.

It is our usual practice in cases of this type to solicit information from both parties involved. We requested information from you concerning this work relationship. Because we received no reply, we are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination.

You provide the worker with his work assignments and the methods by which to perform them. If problems or complaints occur, the worker contacts you for their resolution. The worker follows the schedule that you set. He provides his services on your customers' premises. The worker is required to perform his services personally. If additional personnel are needed, you are responsible for hiring and compensating them.

You provide all the supplies and equipment. The worker provides his own uniform. You pay the worker at an hourly rate. Customers pay you directly at prices that you establish. You do not cover the worker under workers' compensation. The worker did not indicate an investment in your firm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

You provide the worker with paid vacations. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker does not advertise his services or provide similar services for others. He performs his services under your name.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you provide the worker with his work assignment and the methods by which to perform them. You retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction. The worker follows the schedule that you set. He performs his services on your customers' premises. 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 is required to perform his services personally, meaning he cannot engage and pay others to perform services for you 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 you retain behavioral control over the services of the worker.

Factors that illustrate whether there is 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, does 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. You pay the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retain control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker performs his services on a continuing basis. He performs his services under your name, enabling you to fulfill your contracts with your customers. The worker is not engaged in an independent enterprise, but rather the cleaning services performed by the worker are a necessary and integral part of your cleaning 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. Both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.