

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.91 RepairMaintenanceWkr	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

Information provided indicated the firm is an elevator maintenance repair business. The firm stated the prior company had split. The firm stated the worker performed services as a salesman/subcontractor. The worker indicated he was a mechanic/repair person. Services were performed in tax year 2013. The firm reported the income on Form 1099-MISC.

The firm stated the worker received no assignments. He decided by himself what to do and where to go sell. The firm stated he received no direction from the firm. The worker made all the decisions, made his own schedule. The firm stated the worker used his own vehicle, tools, and materials. The worker was paid on commissions and piece work. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated he did work for others. The firm indicated he left on his own.

The worker indicated he felt he was an employee, and not an independent contractor, as he had no business/contractor's license, which is required in the State of [REDACTED]. The worker stated he had performed services since 2011 for partners, until they split up. He continued to perform the same services in one continuous work relationship, but had been paid under three different companies. The worker stated the firm would text, e-mail or phone him with his job assignments. [REDACTED], was responsible for resolution of any issues. The worker turned in all completed work tickets. The Worker indicated his had set hours of eight to four-thirty. Services were performed at the customer locations under contract with the firm. Each job took approximately two hours to complete. The worker stated there were no required meetings. His services were performed personally. He indicated he did not have the authority to hire, the firm hired and paid all workers. The firm provided the materials, he had his own tools. He stated he was paid by the hour and the company paid the firm. The firm determined the rate of pay. The worker indicated he quit.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Conclusion:

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, and not an independent contractor operating a trade or business. No evidence has been provided by the firm to prove the worker owned or operated his own business. No bids were provide, no invoices, no copy of the worker's contractor's license or insurance. The firm stated the customer paid the firm for the services received, therefore the firm retained the right to direct the services performed, in order to protect their financial investment.