

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.132 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

The worker initiated the request for a determination of his work status as a helper performing repair work in tax year 2014. The firm's business is described as asphalt coating and striping.

The firm's response was signed by [REDACTED], owner. The firm's business is described as parking lot maintenance and repair. The worker performed services as equipment and trailer repair. In addition, the worker did some gravel work running a bobcat – laying out gravel before asphalt was laid (at a trailer park). The firm told the worker he'd be receiving a Form 1099-MISC and paying self-employment tax.

According to the firm, the worker only worked for the firm when he could or when the firm needed something fixed; no specific training and instructions were given. The worker determined the methods to be used to perform the work. The firm indicated the worker did not have a schedule; the worker would give the firm a date that he would return repaired item. The firm stated the services were rendered at the worker's home and the firm's location. The firm stated the worker was not required to perform the services personally; the worker hired and paid for helpers.

The worker responded that he was given specific training and instructions on how to use tools and equipment and instructed on how to spray coatings and other markings. The job assignments were given verbally; and it was the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker showed up 7-7:30 a.m. and services were rendered at the customer's location and the hours varied depending on the size of the job. The worker indicated he was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm acknowledged that the firm provided equipment, repair parts as well as materials and gas. The firm stated the worker did not lease equipment, space, or a facility; however, the worker incurred expenses buying repair parts. The firm indicated the worker was paid by the job or after a down payment and balance at end of the job; the customers paid the firm. The firm responded that the worker was not at risk for a financial loss and the worker did not establish the level of payment for products sold or services rendered; the worker was a subcontractor to the firm.

The worker responded the firm provided all equipment, tools, materials; and, that he furnished nothing and did not lease equipment, space of a facility and did not incur expenses in the performance of the job. The worker indicated the firm paid him an hourly wage. the customers paid the firm. The worker concurred that he was not at risk for a financial loss in this work relationship and that he did not establish the level of payment for services provided or products sold.

Both parties agreed that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed.

Analysis

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.