

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.153 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 firm is in the business of operating a marina that provided wet slips, boat repairs and painting. The worker was a wet slip renter and provided labor services in 2014, 2015 and 2016. He received a Form 1099-MISC in each of those years. There was no written agreement.

According to the worker, the firm gave him work assignments and instructions verbally each day regarding his duties. The firm noted that he would check-in with the firm to see if there was any work to do. The worker noted that the firm determined the methods by which the assignments were performed with the firm indicating that the worker worked without supervision. Both parties agreed that the firm would be contacted if any issues or problems arose. According to the worker, there was daily verbal communication. He would be told what work to do on each boat and was asked for updates on progress. The firm noted the worker did not submit any reports to the firm but that the marina manager would provide a visual check. The worker began work each day by cleaning the office and bathrooms. When the firm showed up, he would be told his tasks for the day. The firm noted that he arrived and left whenever he chose at the firm's premises. There were no meetings. The firm indicated that the worker was to provide the services personally. The worker noted that the firm would hire/pay any substitute workers.

Both the firm and the worker agreed that the firm provided all supplies, materials and equipment. The worker provided some small tools. The worker noted that he was paid by the hour. Both agreed that he had no other economic risk. Both parties agreed that the customer paid the firm and that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm indicated that he did. The relationship ended when the worker was fired as well as evicted because, according to the firm, his work was unsatisfactory.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm noted that the worker came and went as he pleased with no set scheduled work hours or days. Usually, the establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control, however, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm obtained the various marina-related work and engaged the worker to provide the necessary services. There was no evidence provided showing that the worker bid on each assigned job that he undertook. While the worker's working hours may have varied, it would be reasonable to assume that when the worker was engaged to work on a boat for the firm's customer, it was the firm that remained obligated to the customer. This eventually led to the worker's services being terminated for unsatisfactory work.

The worker provided his services on the firm's premises. 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. In addition, the worker provided his services on a continuous basis throughout the time period involved. 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.

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. The firm did not provide any proof that the worker bid on any of the work or issued invoices per job completed. It would be reasonable to assume that the firm kept track of his work hours to issue the appropriate payment. The worker was paid by the hour for his time spent working for the firm and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker provided his labor at the firm's marina. The fact that the worker 'offered' to work was not evidence illustrating that he was self-employed. His services of working on boats or cleaning up around the marina were part of the firm's continuing operation and not an indication that the worker was operating a separate business venture at the firm's location. Instead, his services were part of the necessary activities of the firm's continuing business operations. 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.