

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA.154 Laborer/Trades	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 electrical company. The firm indicated it worked with [REDACTED] to rehab houses, and was also the general contractor in the renovation of bank owned properties. The worker had been retained in 2014 ([REDACTED]) and 2015 ([REDACTED]) to provide services as a laborer for various duties such as patching, painting, tiling and carpentry work, on those projects. The firm confirmed he had changed business names in 2015. The firm felt he was an independent contractor because the worker set his own schedule, when he started and ended the work day. The firm stated services were performed at the customer locations. The firm stated no subs were needed, but the worker had the authority to hire, but [REDACTED] had to approve all people working on site. The firm indicated it provided all materials. The worker provided his own tools. They agreed on twenty-five dollars per hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. He was not represented to any customers. When the firm stopped working in the capacity as a general contractor, his services were no longer required.

The worker agreed the firm was the general contractor for rehabbing residential properties. He had been hired to perform carpentry services, tiling floors, kitchen remodels etc. The worker stated he was given specific instruction as to how to do the work and what was to be done. Each morning the worker reported to the firm's shop at eight a.m. to discuss the days' workload. He would pick up the tools, materials, equipment and the company vehicle. Often the firm would accompany him to the job to give onsite instructions also. He would work until four-thirty p.m. returned vehicle to shop, picked up his personal vehicle and returned home. Services were performed at the various jobsites as determined by the firm. The worker stated he was to perform his services personally. The worker agreed he was paid by the hour and the customer paid the firm. He indicated he had no contact with the customer. He stated he did not perform similar services for others. He stated he left when he realized he was not being paid as an employee.

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

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.

Analysis

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.

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.

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. 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. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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. The firm held the contracts with [REDACTED] and the banks to perform the remodeling services. Therefore the firm had the opportunity for profit or loss of the contracts if the work was not done correctly and on time. The worker performed services as instructed, at the locations instructed, utilizing the firm's vehicle, equipment and materials. He was paid by the hour for those services. The firm indicated the worker performed similar services for others, yet provided no proof, nor was there any evidence found in our research of a business presence for the worker.