

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.39 Overseer	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 an oil and gas well/field. The worker was engaged to open and close gates to the oil and gas properties allowing vendors and contractors to work at the sites. He received Form 1099-MISC for his services in 2013 through 2015. There was a written agreement that may or may not have been in effect for part of the time period. It appeared that the worker no longer owned the firm as of 4/15/2013; therefore, this issue and previous year were not factors in the determination.

Both the firm and the worker agreed that the worker was provided with instructions by email or by phone, written or verbal. Both parties also agreed that the firm determined the methods by which the assignments were performed and would be contacted if any problems or issues arose. Only the worker noted that daily reports, emails and phone calls were required. The firm noted that the worker had to be available to allow contractors to enter sites to work on wells during the day. The worker included the following details: he went to work in the mornings, and spent the rest of day opening/closing gates for contractors.; he checked twenty wells including well equipment and did most of the work to maintain the roads, locations, tank installations and flow lines. The firm agreed that the worker worked in the field locations but had no set time or schedule. The worker noted he worked at nights from a hotel room and during the days at well-site locations. Only the worker mentioned that he was required to attend any meetings that the firm initiated. He noted that he was required to provide the services personally and that only the firm would hire/pay others though evidence provided showed that the worker hired others, paid them and was reimbursed by the firm.

The firm noted that it provided nothing and that the worker provided the equipment and tools. The worker noted that the firm provided the supplies, equipment and that the worker provided nothing. The worker noted that he incurred hotel, travel, meals, gas, maintenance, truck and insurance expenses with the firm reimbursing him for the hotel, truck, and insurance. The firm noted that it only reimbursed for some truck expenses. Both parties agreed that the worker was paid monthly with the firm mentioning that the worker had the economic risk of equipment, supplies, tools, and overhead. The worker issued invoices to the firm for his services as well as for other expenses incurred on the firm's behalf. Both parties agreed that the firm established the level of payment for services.

There were no benefits according to the firm but the worker indicated that there were paid vacations, sick pay, and paid holidays. Both agreed that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The worker noted that he had an exclusive work contract. The relationship ended when the worker noted that he was told he was no longer needed; the firm noted that the worker quit.

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.

There are significant similarities between this case and Revenue Ruling RR 70-309, 1970-1 C.B. 199. In that ruled case, oil well pumpers performing services for a corporation having the right to exercise whatever control is necessary to assure proper performance of their services are employees of the corporation. The corporation operates oil wells and engages the oil well pumpers under written contracts. The pumper will perform certain services for a fixed amount of remuneration per month. The contracts state that the pumpers are independent contractors. The pumpers provide their own transportation and small hand tools of minimal value. They are not required to follow a fixed routine or to work prescribed hours; however, they are required to submit written reports to the corporation on a regular basis. Due to the distance between the oil wells and the corporation's headquarters, the pumpers seldom see its agents or other representatives. Major tools and similar items are furnished to the pumpers by the corporation. The corporation retains the right to discharge the pumpers at any time upon proper written notice.

The oil well pumpers in this case perform personal services pursuant to a continuing relationship created under a written agreement that is terminable at any time; their services are both necessary and incident to the business conducted by the corporation; and they are not engaged in an independent enterprise in which they assume the usual business risks. Although the pumpers perform the services away from the headquarters of the corporation and are not given day-to-day directions and instructions, the corporation has the right to exercise whatever control is necessary to assure proper performance of the services by them.

In this instant case, the worker also provided necessary services on an essentially full-time basis for the day-to-day operations of the firm's oil/gas fields. Both parties agreed that there was no fixed schedule; 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. This occurred when the worker was told to be at specific sites at specific times to allow other workers access to the site. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. There was evidence provided that the worker was to submit reports/logs. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. Also, 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. It was the firm that had the investment in the business. The worker received set monthly compensation for his labor and was reimbursed for other expenses incurred on the firm's behalf such as truck and travel expenses along with labor costs. If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. Also, 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. The worker provided essential services for the firm's day-to-day operations. When doing so, the worker was not engaged in an independent enterprise even though it is acknowledged that the worker hired laborers to perform work for the firm. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, it is also possible that the individual may be an employee acting in the capacity of a foreman for, or a representative of, the employer. This appeared to be the case as the laborers were hired and paid by the worker with the firm reimbursing the worker. The worker's services as a field manager/overseer were part of the necessary activities of the firm's business operations as the firm itself was located some distance from its actual site 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.