

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.49 MiscLaborServices	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 an office furniture sales and installation business. The firm engaged the worker to provide moving services from one warehouse to another. The firm provided the worker with general moving instructions. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker performed services on a flexible schedule during the firm's hours of operation. The worker performed the services at 2 firm warehouse locations. The firm required the worker to perform the services personally.

The firm provided everything the worker needed to perform the assigned services. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided no benefits. The worker did not perform similar services for others or advertise to the public as being engaged in a business per the worker. The firm did not know if the worker performed similar services for others or advertised as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker to perform moving services from one warehouse to another on a temporary basis until the job was completed. The firm provided the worker with general moving instructions. The firm assigned the worker services to perform. The firm and the worker determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm allowed the worker to perform the services on a flexible schedule during the firm's hours of operation. The firm required the worker to perform the services personally at 2 firm designated warehouses. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to significant on-going business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to performance of the services for the firm's business operations. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business on a regular and continuous basis over several months at the firm's places of business until the job was completed. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.