Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.94 RepairMaintenanceWkr	Determination: ☒ Employee ☐ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

Facts of Case

The firm is operating a commercial cleaning business. The firm engaged the worker through a referral to perform cleaning services for the firm's business operation. The worker had experience so the firm did not provide the worker with any formal training. The firm provided job instructions for jobs the firm assigned worker to perform and accepted by the worker. The firm, firm's customers, and worker determined the methods used by the worker to perform the services. The worker provided the firm with job reports on services performed and time reports. The worker performed the services at 2 locations for the firm's customers. The worker's routines varied based on the services needed to be performed. The worker was allowed to perform the services on a flexible schedule during hours and days agreed too between the firm and the firm's customers. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm or firm's customers provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm did not reimburse any expenses. The firm paid the worker a set amount per job for a designated number of hours and the customers paid the firm. The firm determined the level of payment paid by the customers and agreed to the level of payment made to the worker. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did perform similar services for others per the firm and was not required to obtain the firm's prior approval. The worker did no advertising as a business to the public. Both the firm and the worker 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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. The firm engaged the worker through a referral to perform services for the firm's customers according to the agreements between the firm and firm's customers. 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.

The firm did not provide the worker with any formal training due to the worker's prior experience but did provided job instructions regarding the services needed to be performed in order to meet the firm's customers agreements with the firm. The firm allowed the worker to accept or decline job offers and work on a flexible schedule basis during time frames and days agreed too between the firm and the customers. The firm, firm's customers, 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's work schedule varied and was based on the firm's agreements with the customers. The firm required the worker to provide the firm with time and activity reports. The firm required the worker to perform accepted jobs personally at the firm's customers locations. The firm hired and paid substitutes or helpers as needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm and firm's customers provided the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or incur any business expenses. The firm paid the worker a set amount per job and the firm's customers paid the firm. The firm determined the level of payment for the services paid by the customers and agreed too with the worker. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. 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 perform similar services for others while performing services for the firm per the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's customers job sites on a regular and continuous part-time basis under the firm's business name over several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.