

SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.19 Overseer

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

Facts of Case

The firm is an individual who engaged her granddaughter to perform property management services on the firm's rental properties. The firm provided the worker with instructions on job assignments, responsibilities, and requirements in a signed agreement. The firm and worker determined the methods used by the worker to perform the services. The firm required the worker to contact the firm or firm's designated individuals regarding any problems or complaints for resolution. The firm required the worker to complete spreadsheets showing business transactions. The worker performed the services on a variable flexible schedule based on the firm's business needs. The worker performed the services at home and at rental property locations. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers directly and indirectly through pre-approved authority given to the worker.

The firm provided the worker with a maintenance budget to work with. The worker provided personal transportation and a cell phone. The worker did not lease equipment or space from which the services were performed. The worker incurred business related expenses and the firm reimbursed all business related expenses. The firm paid the worker a commission on rental collections received. The customers paid the firm directly and indirectly through the worker. The worker was required to turn over 90% of the rent collections to the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and rentals. The worker could not suffer any economic loss and had no financial risk.

There was a signed working relationship agreement. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The worker advertised firm vacant rentals in the newspaper. The firm referred to the worker as her granddaughter the property manager to the customers. Both the firm and 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. In this case the worker was engaged to perform rental property management services for the firm's rental property business. The firm assigned the worker services to perform and provided the worker with the necessary instructions in order to perform the services. The firm and 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 worker performed the services from home and at the firm's rental locations on a flexible variable schedule based on the firm's business needs. The firm required the worker to contact the firm or other designated individuals regarding problems or complaints for resolution. The firm required the worker to provide the firm with completed spreadsheet reports on business transactions. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers directly and indirectly through prior approval given to the worker. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going significant business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm provided everything the worker needed in order to perform the services. The worker provided personal items. The firm reimbursed the worker for all business expenses. The firm paid the worker a commission on collected rents and the customers paid the firm directly and indirectly through the worker. The worker was required to turn over 90% of rents collected to the firm. The firm determined the level of payment for the services and rentals paid by the customers. The worker could not suffer any economic loss and had no financial risk with regard to the performance of the services. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss.

There were no independent contractor contracts between the firm and the worker. The worker did not perform similar services for others. The worker did not advertise to the public as being engaged in a business but did advertise the firm's vacant properties in newspapers. The firm referred to the worker as a property manager to the customers. 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.