

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.25 Manager

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a construction management business. The firm engaged the worker to perform senior construction management services under the firm's designated project manager. The worker received paid [REDACTED] training as required by the industry. The project manager assigned the worker services to perform and both the project manager and worker determined the methods used to perform the services. The firm required the worker to contact the project manager regarding any problems or complaints for resolution. The worker was required to provide the firm with various business reports. The worker worked a variable schedule in coordination with the project manager. The worker was required to perform the services at the firm's designated job sites. The worker attended occasional project meetings. The firm required the worker to perform the services personally.

The firm provided the worker with a computer and cell phone. The worker provided transportation and personal items. The worker did not lease equipment or space. The worker incurred vehicle expenses and personal item expenses. The firm reimbursed all job-related expenses. The firm paid the worker a salary on a biweekly basis. The customers paid the firm. The firm determined the level of payment for the services. Per the firm the worker was not covered under worker's compensation insurance and the worker indicated he was.

There were signed contracts between the firm and the worker indicating the worker to be an independent contractor. The contract addressed various projects for which the worker was being engaged, compensation of established amount paid biweekly, time period for which the worker was engaged, and listed various duties required to be performed by the worker according to the firm's company standards. The firm agreed to payment and provision of equipment and housing at no cost to worker during the contract period. There was a liability for early termination by both parties included in the contracts.

The worker did not perform similar services for others while performing services for the firm. There were noncompete issues indicated within the contracts. The worker did no advertising to the public as being engaged in a business. The firm represented the worker as a field representative or construction manager to the customers. The firm terminated the worker's services for not performing services according to firm's standards and contract and agreed to pay the worker a one-time demobilization amount for acceptance of the termination offered. A subsequent agreement indicated the termination was due to end of contract and no payment was indicated for signing the agreement.

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, you and your designated project manager not the worker had control over the methods and means used in the performance of the services.

When a worker does not have a significant financial investment in a business requiring on-going 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 significant on-going business expenses. You had the business investment and control over profit and risk of loss with regard to the services the worker performed for your business operation. You paid the worker a biweekly salary and your customers paid you. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for your business operation. These facts evidence financial control by you over the services performed by the worker for your business operation.

There were signed contracts between you and the worker indicating the worker to be an independent contractor. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others while performing services for your business. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for your business under your business name on a regular and continuous basis over a period of about 2 years.

Both you and the worker could not terminate the working relationship at any time without incurring any liability for termination according to the contract. You terminated the working relationship originally for contract violations of failure to conduct business within your company standards, You agreed to pay the worker a set amount as demobilization cost in acceptance of his contract termination and agreement as well as other issues. Subsequently the termination was changed to expiration of the contract. There were no payments addressed for termination in the subsequent agreement. 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.