

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.40 Manager	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 a property rental business. The firm engaged the worker through an application process to perform property management services for the firm's business operations. The worker was experienced so no formal training was provided. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints she could not resolve and the firm required the worker to resolve them. The firm required the worker to provide the firm with rental and deposit reports. The worker worked a flexible schedule based on the firm's business needs and firm's tenants needs. The worker performed the services at a firm provided office location. The firm stated the worker was not required to perform the services personally and did not need the firm's prior approval to hire any substitutes or helpers and the firm paid them. The worker indicated being required to perform the services personally, conducting job interviews which were required to be approved by the firm and the firm hired and paid them.

The firm provided office equipment and supplies. The worker provided a personal vehicle and cell phone. The worker did not lease equipment or space. The worker incurred personal item expenses and the firm did not reimburse any expenses. The firm paid the worker an hourly wage per week and the tenants paid the firm. The firm and worker determined the level of payment for the services per the firm. The worker stated the firm determined this issue. The firm did not carry workers' compensation insurance. The firm stated the worker's economic loss and financial risks were related to possible damages to personal items provided. The worker indicated not applicable to an economic loss and financial risk the worker could incur in performance of the services.

There were no signed contracts provided 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. There were no non-compete agreements. The worker did not advertise to the public as being engaged in a business. 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 who had experience through an application process to perform property management services for the firm's property rental business operation. The firm assigned the worker services to perform and the worker received assignments through the firm's business tenants as well. The firm and worker determined the methods used 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 contacted the firm regarding any problems or complaints the worker was not able to resolve and the firm required the worker to resolve them. The firm required the worker to provide the firm with rental reports and deposit information. The firm allowed the worker to perform the services on a flexible schedule basis. The worker performed the services at a firm provided office location and rental locations. The worker performed the services personally. The worker interviewed substitutes or helpers and the firm hired and paid them. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided office, equipment, and supplies. The worker provided a personal vehicle and cell phone. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage per week and the tenants paid the firm directly and indirectly through the worker. The firm determined the level of payment by the tenants and agreed to the hourly wage payment made to the worker for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. The risk of damages to personal items being used would not be considered control over profit and losses in a working relationship. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed contracts between the firm and the worker. The worker did perform similar services for others while performing services for the firm per the firm. 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 but advertised the firm's business through various media resources. The worker personally performed services for the firm's business operation on a regular and continuous basis over a period of about 1 year under the firm's business name.

Both parties 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.