

SS-8 Determination—Determination for Public Inspection

Occupation 01FMW.1 ForestMaintenanceWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for completion of Form SS-8.

From the information provided the firm is a non-profit organization under IRC Section 501(c)(3) that is run by a volunteer board and is organized to support citrus research in [REDACTED]. The worker performed services from approximately November 3, 2014 to October 31, 2015 and the payer states the worker performed services as an independent consultant. The worker's services included collecting research data, following standardized procedures, maintaining plant materials for research, screening designated populations for disease resistance, and propagating materials through seed and budding. The payer believes the worker was an independent contractor (IC) because the relationship as contractor was explicit in the agreement between themselves and the worker, the worker determined her own hours and work priorities based on general priorities, there was no supervision over of the day-to-day work performed, the worker submitted invoices, and no training was provided to the worker.

The payer provided no training to the worker and they state they gave the worker general guidance on the services needed and what the needs of the research program were. The worker determined how she performed her services. The worker was required to personally perform her services at the designated work site. The worker's routine was not specified or recorded other than submission of billable hours. The worker was not required to attend meetings.

The payer states they provided no equipment, supplies, or materials to the worker in order to perform her services and a third party provided an off-road vehicle, computer, and horticultural tools. The worker did not incur expenses and the payer reimbursed the worker for expenses providing the worker obtained prior approval from the payer. The worker was compensated at an hourly rate and the payer reported the worker's 2014 earnings on a Form 1099-MISC. There was no evidence presented nor found in this investigation that the worker had an investment in a business related to services provided and therefore, she could not incur a loss as a result of her services.

The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the payer. The need to direct and control a worker and his or her services should not be confused with the right to direct and control. The worker provided her services on behalf of the payer's organization rather than an entity of her own. Even when a company or organization allows a worker considerable latitude in performing their services, the retention of the right to give instructions or directions, without exercising that right, is enough to make the worker an employee. An experienced worker is free and is expected to exercise his or her own judgment and initiative as to the operation or running of a project and is many times hired due to their experience and knowledge. The payer had the right to determine what the worker's services consisted of and they retained the right to issue general instructions as to the means to be used to reach those objectives.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

In this investigation, we looked at whether the worker displayed characteristics of an independent contractor; such as the outpouring of money into a business offering those services to the public and the opportunity to incur a loss or realize a profit as a result of her services. The worker in this case did not have this. The worker did not have a business license or business registration in the state which she performed services. The worker did not have an investment in a business related to services performed, the payer reimbursed the worker for any travel expenses she incurred, and therefore, she did not have an opportunity to incur a loss or realize a profit as a result of her services. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the payer's mission for the organization. While the submission of an invoice is a characteristic of an independent contractor, the total relationship needs to be analyzed to make an accurate decision of a worker's status. If a worker is required to submit an invoice in order to be paid or obtain a job or as a condition of employment, that factor loses weight in determining the worker's status as an independent contractor. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the payer's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Based on the above analysis, we conclude that the payer had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.