

SS-8 Determination—Determination for Public Inspection

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| Occupation 02AAD.46 Designer/Artist | 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

Information provided indicates the firm is a wholesale wedding gown accessory business. The worker indicated she performed services for the firm as a design assistant. In tax year 2014 the worker performed services on an internship and was still in school. Neither party appears to be questioning the contract status for that time. The work classification was initiated by the worker for tax years 2015 through 2017.

The firm indicated she received instructions/training via Tech packs (industry standard garment construction directions). Projects were posted weekly; she chose which ones she wanted to do and the order which she would do them. Problems were resolved either collaboratively or by the business owner. The firm indicated she typically performed services Monday through Wednesday, during busy times she may have worked an additional day. Start and end times were based on her schedule. The firm indicated she worked out of her home as well as at the business locations. No regular meetings were required. The firm provided fabrics, trims/notions, sew machines, dress forms, cutting tables and rulers. She also provided the same. She was paid on a contract basis on invoices submitted. The customer paid the firm. Either could terminate the work relationship without incurring a penalty or liability. The firm indicated she did perform similar services for others. The firm states she raised her rates beyond what the business could afford. The firm provided a copy of the "design Assistant Contract" not signed by either party. The duties included: Assist the designer in developing new collections, source materials for the new collection, create tech packs, make full size runs of patterns post market, attend trade shows, manage and prioritize production work (with the wholesale manager and [redacted] to determine the critical orders), direct the other contract workers and interns when [redacted] is not present, ensure all steps of the production are done in a time efficient manner, and reorder materials from suppliers. Rate is \$20.00 per hour up to 25 hours per week. That agreement was for the next three months with a review to follow in mid-late October 2015. The firm also provided a summary of the discussions about the workers rates she was paid.

The worker has provided a copy of a letter of employment for her signed by [redacted] which states she was a current employee as a design assistant and made \$3100.00 per month. The worker also provided a copy of the firm's business card that represented her as Design Assistant. The worker agreed most weeks were Monday through Wednesday or Thursday none to six or eight to five. Adjustments and time off had to be approved by the firm. Staff meetings were required. The worker indicated she was paid by the hour. The customer paid the firm for gowns and accessories purchased.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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. We have applied the above law to the information submitted. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm 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. The services were performed under the firm's business name and reputation. The fact the worker could work independently is not an indication she owned her own business. The "assistant design contract" provided by the firm indicated her work would be reviewed after a three month interim, with the offer of twenty dollars per hour, with a review after three months. Obviously her work was satisfactory as she stayed on until 2017. That indicates an employer/employee work relationship. Her duties were to manage the other "contract" workers and interns, prioritize work production, when the owner was not in attendance, and attend trade shows on behalf of the firm, order materials and supplies, utilizing the firm's credit accounts. These are all services performed as an employee in the capacity of an assistant manager. She was paid by the hour, the fact she tried to get a pay raise, does indicate she is in business for herself.