

SS-8 Determination—Determination for Public Inspection

Occupation 02ABT.4 Accounting/TxPrepWkr	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 worker requested a determination of employment status for services he performed for the firm in 2013. The firm is a business comprised of attorneys and CPAs providing benefit and consultation services to its clients. The firm responded to our request for information. The worker performed services as a CPA and was engaged on a temporary basis to help with a backlog of work.

The firm stated that the worker and the firm entered into an oral agreement that the worker would be treated as an independent contractor. The firm feels the worker was an independent contractor because the SS-8 stated that the firm only directed the end result of the projects but did not provide any control over how the worker did the project. The worker did not receive any training. The firm stated that the worker received most of his assignments by e-mail or phone. The worker determined his own methods. The worker was required to submit invoices biweekly. Both the worker and the firm sent examples. The firm stated that the worker's hours and schedule varied. He performed 90% of his services at the firm's location and 10% at client locations. The firm stated the worker had to personally perform the services but was not required to attend meetings.

The firm provided the computer he used and the worker provided his own cell phone. The worker did not incur any expenses. He received an hourly rate. Either party could have terminated without liability.

The sample invoices that were submitted show daily details, a detailed description of what the worker did, number of hours, rate and total. The worker submitted examples of how the worker was directed by the firm in the performance of his job. He stated that either the [REDACTED] or [REDACTED] reviewed and finalized his work. changes and edits were done at their discretion. The worker stated he did attend some weekly meetings at a client work site. He was introduced to the client as a new member of the team. The worker was required to submit daily time entry records, per the sample sent in, that detailed the project, task, type, and hours spent.

Analysis

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.

The 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.

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 business. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker received his assignments from the firm and reported to the firm when problems occurred. The firm reviewed the work and made adjustments as necessary. This shows that the firm maintained, and exercised, the worker in the performance of his duties.

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. The firm provided all the materials, equipment, and supplies the worker needed. The worker only provided his cell phone. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training.

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. The worker was engaged temporarily to help with the firm's backlog. He performed his services as a representative of the firm for the firm's customers. 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "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. The worker had no investment in the firm's business, received an hourly rate, and could not suffer a loss.

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.

Firm: For further information go to www.irs.gov Publication 4341