

SS-8 Determination—Determination for Public Inspection

Occupation 02CON.14 Consultant/Advisor	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 operates as a district office of an insurance agency providing insurance and financial services. The worker was an insurance agent, engaged for a period of time to perform consulting services under the agency's District Manager Training Assistant program. His duties included assisting with the growth of the agency, and its agents within the firm's district. The firm treated the worker status as independent contractor, issuing to the worker a Form 1099-MISC at year-end to report the monies he received for the consultant services as non-employee compensation.

Time records were provided in this case showing the worker's title as District Manager Training Assistant for the [redacted] office. The supervisor's name shows as the firm's owner's name. The worker received two weeks' classroom training at the [redacted], coupled with two weeks of field training done locally. The worker also attended continuous online and webinar trainings. The worker performed his services personally, Monday to Friday, under the firm's supervision. The worker maintained a to-do list created from tasks given to him on an ongoing basis from the the firm's owner. Most tasks were completed at the firm's premises (district office). Some of the worker's services were performed from his residence, at customers' office locations, and at agents' offices. The firm's owner and the worker both determined the work methods by which to perform the services, and both parties resolved problems. The worker was required to provide the territory office with monthly and weekly reports, with a copy sent to the firm. The worker was required to attend staff meetings as requested by the firm's owner.

The firm provided the worker with office space, computer and printer equipment, and the office supplies needed to perform the services. There was no information provided to support that the worker rented space or items needed to perform his services. The worker provided his own vehicle, fuel, licensing for insurance sales, cell phone, continuing education costs, travel, leads, and office supplies. The firm paid the worker consulting fees, plus commissions as payment for his services. There was no information provided to support that the worker incurred economic loss or financial risk related to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (sick pay, paid holidays, paid vacations, bonuses) were made available to the worker. There was no information provided to support that the worker performed similar services for others, or that he advertised as being in business, while engaged by the firm. The worker's services were performed under firm's business name. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally. The worker used the firm's facilities, equipment, tools, and supplies, and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov