

SS-8 Determination—Determination for Public Inspection

Occupation

02COO.5 Coordinator

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

Facts of Case

The worker initiated the request for a determination of her work status as a youth council coordinator in tax years 2011 through 2014. In this capacity she was in charge of the youth council, planning the meeting agendas, and assisting in the planning of training and youth council meetings and rallies. She stated she was a paid intern. She had regular meetings with management, updated social media site (marketing tool), and recorded and typed meeting minutes. The firm's business is described as a non-profit organization under Sec. 501 (c)(3) delivering up-to-date information and developing initiatives that serve the immediate needs of those working to prevent substance abuse throughout the state. The worker started the job as a paid intern since at the time she was a full-time college student.

The firm did respond to the request for information; the firm's response was signed by the firm's, Executive Director. The firm's business is described as a drug—substance abuse prevention non-profit organization under Internal Revenue Code Sec. 501 (c)(3). The worker was engaged to bring her knowledge of youth-led prevention and her ability to relate and communicate with high school students.

According to the firm, there was no training or instructions given to the worker. The work assignments were performed per the agreement. The worker determined the methods by which the services were performed. The worker provided the firm with monthly invoices. The worker did not have a routine or scheduled hours. The worker was not required to perform the services personally.

The worker stated there was no specific training but she was given instructions by management. Her job assignments came through the program manager and it was the firm's program manager and the worker that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm's executive director and the program manager for resolution. The services were rendered at the firm's place of business or the worker's home. The worker responded that she was required to attend monthly adult and youth council meetings and biweekly program manager meetings and was threatened with firing for a late arrival. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that it provided nothing to the worker; however, the worker provided email, computer, phone, work space, office, supplies, and transportation. The worker did not lease equipment, space, facilities. The worker incurred expenses for office, travel, licenses, permits, and taxes. The worker was paid a monthly fee for services. The customer paid the firm. The firm stated the worker was responsible for office, equipment repair, maintenance and replacements, and all travel expenses. The level of payment for services was negotiated between the parties.

The worker stated the firm provided her with a laptop computer and projector if needed for training and youth rallies, copy paper, and markers. She stated she furnished poster board, markers, and music. She acknowledged that she did not lease equipment and did not incur expenses in the performance of the job and that she was paid a salary. The worker indicated she was not at risk for a financial loss in this work relationship.

Both parties concur that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. Both parties provided copies of the 'agreement' which outlined the worker's tasks, the amount the worker was to be paid each month, and the worker was to provide a monthly invoice.

The original agreement was made August 1, 2011 and renewed in subsequent years and under a different state coordinator. The firm was awarded a grant. The firm hired the worker to assist in the completion of certain portions of the grant as well as associated services, under the direction of the statewide coordinator.

Analysis

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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. See Rev. Rul. 70-309, 1970-1 C.B. 199. "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.

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 considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its obligations under the grant were met. The worker was not operating a separate and distinct business; 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. 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. 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 firm's business.

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.