

SS-8 Determination—Determination for Public Inspection

Occupation 02COO.9 Coordinator	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 is in the business of manufacturing specialized rolls for web based applications. The worker was engaged to provide his expertise for various projects and utilized his knowledge of the business as he had previously been an employee of the firm. In this current position, the worker was a job planner who processed new as well as repair job orders. He planned the manufacturing process including job routines and the scheduling of jobs. He received a Form 1099-MISC for his services in 2013 and 2014 as well as for those performed in 2010. In 2014, he also received a Form 1099-MISC from [REDACTED], a related company, whose operations were being consolidated into the firm's site. There was no written agreement.

The firm noted that there was no training provided for any services rendered after 2009; however, the worker indicated that job boss manufacturing systems training was provided. The firm indicated that the projects were discussed with the firm; the worker indicated that the assignments were provided via job folders, emailed docs and other verbal directions from the firm. Each party indicated that the other determined the methods by which the assignments were performed; but both agreed that the firm's manager would be contacted if any problems or issues arose. The worker noted that there were no regular reports due but the firm indicated that there were status updates. The firm noted that the worker had flexible hours with project deadlines; the worker noted that he worked set scheduled hours, Monday through Fridays, and sometimes on weekends dependent on the workload. Both parties agreed that his services were all provided at the firm's location. Both also agreed that there were required meetings to attend. Both the firm and the worker agreed that the worker was required to provide the services personally; the worker mentioned that only the firm would hire and pay any substitute workers.

Both the firm and the worker agreed that the firm provided the facility, computer, and supplies; the worker also mentioned tools, training and safety equipment. The worker noted that he received an hourly rate of pay and had no other economic risk. The firm indicated that it was a pre-determined amount agreed to on a project-by-project basis; however, no evidence was provided to support this. Instead, the firm provided emails from the worker reporting his hours worked each day for the week. The worker noted that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. The worker indicated that he was represented as the related firm's employee on organizational charts and emails; he provided that company's manufacturing organizational chart which listed him as a job planner under the project manager. The relationship ended when, according to the worker, the firm ceased manufacturing operations in the state. The firm noted however that the relationship was on a project-by-project basis and ended when each project was completed.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm provided the worker with instructions and his assigned duties. He performed his services according to the firm's scheduled work hours and days, essentially full-time, though the firm indicated that he only had to adhere to deadlines. The term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

The worker provided the services personally at the firm's location. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. In addition, if the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. This is understandable as the firm was already familiar with the worker's background and skills as he had worked previously for the firm. So it is reasonable that the firm wanted the worker to provide the specific services he was compensated for. The worker did not provide his services on a one-time basis but did so on a continuous basis throughout the time period involved. This one work relationship continued without regard to what firm was compensating the worker. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 the workplace, workspace, equipment, tools and supplies. 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. The worker simply received an hourly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was a job planner for the firm's manufacturing operation. He did not hold himself out to the public, or maintain an office, or advertise. He was not engaged in an independent enterprise, but rather the worker's services of planning the jobs undertaken by the firm were essential to the firm's business activities. 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 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.