

SS-8 Determination—Determination for Public Inspection

Occupation 02COO.10 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

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The worker initiated the request for a determination of her work status as a program director. In this capacity she answered the phone/email, contact person for press releases, scheduled lobbying meetings, traveled to ██████████ to lobby, organized conferences, compiled information into packets, coordinated volunteers, ran ad campaigns, social media marketing, etc. in tax years 2010 through 2014. The firm's business is described as trying to reform abuse laws under ██████████ and as the ██████████ trying to stop prosecutor misconduct.

The firm did respond to the request for information; the firm's response was signed by the director. The firm's business is described as promoting fair treatment of victims of domestic violence and promote ethical prosecutorial practices. The worker performed services with regards to social media, advocacy, and publicity. Her title was Director of Social Media, Program Director.

According to the firm, there was no formal training given to the worker. Each week the worker proposed certain activities to the firm's director and the proposed activities were negotiated and finalized. The firm indicated the worker determined the methods by which the services were performed; however, any problems encountered by the worker were directed to the firm director for resolution. The worker was required to provide a listing of activities accomplished in the previous week. All work was performed at worker's home or where ever she desired. The firm responded that the worker was required to perform the personally; any helpers/substitutes were hired and paid by the firm.

The firm provided the worker with a cell phone. The firm stated the worker provided a computer, printer, office furniture and supplies, a car for local travel. The firm reimbursed for out of town travel. The worker did not lease space, equipment, facilities. The firm paid the worker an hourly wage as well as payment for completion of projects. The customer paid the firm. The firm acknowledged that the firm established the level of payment for services provided. The firm indicated the worker was at risk for a financial loss pertaining to furniture, equipment, and supplies. The worker responded that the firm provided her with graphics software, cell phone, conference materials and a debit card used for ordering supplies, buying lunches for lobbyist volunteers, and buying online flights and reserving hotel rooms. She furnished a laptop computer; she did not lease equipment. She indicated the expenses incurred for printing, promotional items, air flights, gas, meals in the performance of the job were reimbursed by firm. The worker was paid an hourly wage and she stated part of the time was she received holiday, sick pay, and vacation pay. The customer paid the firm. She responded that the firm established the level of payment for services provided or products sold.

Both parties concur that benefits extended to the worker consisted of paid vacations, sick pay, paid holidays. Either party could terminate the work relationship without incurring a liability or penalty. Both acknowledge that the worker performed same or similar services (although minimal) for others during the same time frame ; but. disagreed as to whether the firm's approval was required or not. The worker did assemble folders, name tags, flyers and instructions for the conference at home which were then taken to the conference.

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.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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.

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.

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 contractual obligations 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.