

SS-8 Determination—Determination for Public Inspection

Occupation 02COO.12 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 a nonprofit organization creating and supporting permanently affordable, resident controlled housing in [REDACTED]. This work included providing education and technical assistance to existing affordable housing communities. The firm engaged the worker to perform services as a co-op consultant. In this capacity, the worker provided outreach and marketing services to 8 [REDACTED] co-ops regarding the firm's educational programs. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for these services as non-employee compensation.

The worker received on the job training from her manager. The worker was sent to [REDACTED] with all expenses paid, to train with the Urban [REDACTED] for one week. The firm provided the worker with "talking points" based on summaries of educational curriculum developed by the firm, and communications from [REDACTED], and the [REDACTED]. Work assignments were received by the worker's supervisor on a weekly basis via phone, e-mail, face to face, and interoffice memo with specific tasks. The firm and worker both determined the work methods by which to perform the services. The worker contacted the firm regarding problems and complaints that needed resolution. The worker was required to perform her services personally. Services were performed from the worker's residence, and at various co-op sites. The worker was required to attend meetings at housing co-op sites with board members and residents on a weekly basis. The worker was required to provide the firm with reports of contacts made with co-op boards of directors, and members. She was required to provide the firm with copies of letters sent to co-ops.

The firm provided scripts, presentation materials, presentation devices, and the flyers needed to perform the services. The worker provided a computer, office supplies, a second phone line for business calls, and business cards. The worker incurred transportation expenses related to travel to the co-op sites. The firm reimbursed the worker for expenses related to copy/printing for outreach mailings, and for office supplies. The firm paid the worker on a hourly wage basis. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services she performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. There was no information provided to evidence that the worker performed similar services for others, or that she advertised her services to others while engaged by the firm. The work relationship was continuous, as opposed to a one time transaction.

Analysis

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.

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, and routine in the performance of her services. The worker's services were performed personally, at her residence, and at locations designated by the firm. The worker used supplies and materials provided by the firm, and represented the firm's business operations in the performance of her 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 her 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 she performed her 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