

SS-8 Determination—Determination for Public Inspection

Occupation 02COO.22 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

Information provided indicated the firm is a non-profit [REDACTED] who provides social services and community programs to individuals and seniors. The worker had been retained by the firm in 2014 and 2015 as site coordinator/tax preparer/instructor for the [REDACTED] program. The firm reported the income on Form 1099-MISC. Both parties provided copies of the contract agreements. The firm indicated they set the tax return goals. They indicated the worker did not receive assignments. The [REDACTED] Director was responsible for resolving problems or complaints. The W provided "volunteer" timecard reports. The work was performed daily per attached job descriptions. Services were performed at the [REDACTED] Center and off site income tax service center [REDACTED]. The firm indicated no meetings were required, however the Site Coordinator job description stated he was required to attend all mandatory meetings. The firm hires and pays all contractors and volunteers. The firm indicated they provided the volunteer income tax site location, computers, software and general office supplies. The worker is paid by the hour. Individuals do not have to pay for service it is a free service provided to the community. Either party could terminate the work relationship without incurring a penalty or liability. The worker is represented as the Site Coordinator/tax preparer/assistant instructor for [REDACTED] Program. The worker was still under contract as of March 2016.

The worker stated he received training as Site Coordinator and training in the preparation of tax returns that required certification. He stated he had a start and end time at the [REDACTED], Monday through Thursday one to seven pm and Fridays twelve noon to six pm and Saturdays ten am to two pm. The [REDACTED] program director or the executive officer of the center resolved any problems or complaints. He was to provide a copy of the intake Form [REDACTED] filled out by the customer, a sign in sheet kept by the intake clerk. As Site Coordinator he gathered information for reports of returns completed. He stated he was required to attend a monthly meeting. He was required to perform services personally. The firm hired and paid all workers. All supplies, space and computers were provided by the firm. He agreed he was paid by the hour. He agreed all services were free. He stated he was represented as an employee of the [REDACTED] program. He stated it was seasonal work, he returned each year during tax season.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the [REDACTED]. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, 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.

ANALYSIS

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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the

Analysis

continued...

Payment by the hour, week, or month generally points to an employer-employee relationship. 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

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. Although the work may be on a seasonal basis, the firm depends on the services provided to ensure, the [REDACTED] tax service site they set up and provide to the public, is properly set up, organized and run efficiently. The worker was not a volunteer, but provided three services for the firm at a guaranteed hourly rate for each. The firm provided the space, computers, software and office supplies for the services to be performed. The worker was required to be on site full time on a daily basis while the program was open and available to the public, indicating he was not free to work at another job during that time. Per the job description he was required to attend monthly mandatory meetings. The volunteers and paid staff were in fact required to use time clocks, also indicating an employer/employee relationship. Once a volunteer is paid for services, they are no longer volunteers, but paid employees for services rendered subject to Federal employment taxes.