

SS-8 Determination—Determination for Public Inspection

Occupation 02ENG.1 Engineer	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 an s-corporation in business as a Telecom and Technology Company dedicated to providing the finest engineering solutions and technology consulting services which engaged the worker as an engineer from 2008 to 2011. This was pursuant to a written agreement between the parties.

The worker stated the firm provided network, switch and software training. The worker received instructions regarding the services to be performed from the firm’s supervisor or co-owner. He worked from 8:00 AM to 5:00 PM, and received regular bi-weekly remuneration for his services. The firm’s supervisor or co-owner determined the methods by which the assignments were performed. The firm’s supervisor or co-owner was also responsible for problem resolution. The worker was required to submit homework order reports for switch turn downs, and project route add and deletions. He performed the services on the firm's premises 93 percent. The worker was required to attend mandatory monthly meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. The worker worked exclusively for the firm. His services were an integral and necessary part of the services the firm provided to its customers. The firm hired and paid any substitutes or helpers.

The firm furnished the worker with office space computer, monitor, telephone, desk chair and internet, at no expense to him. The worker did not furnish any of the tools or equipment used in performing the services, except for his intelligence, experience and knowledge. The worker did not lease equipment. The firm determined the fees to be charged to its customers. The worker did not incur significant business expenses while performing services for the firm. The worker was paid an hourly wage. The firm’s customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker received paid holidays. According to the agreement the worker was required to give the firm a 45 day notice before leaving the firm. The firm was had the ability to terminate the worker at any time and for any reason, or for no reason, with or without notice effective immediately upon notifying the worker. There was not a “non-compete” agreement between the parties. All work produced became the property of the firm. The worker did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's clients. The firm’s website stated ‘

_____ This statement proves the engineers were represented as employees of the firm. The worker provided a copy of an independent contractor agreement between himself and the firm. However, Federal guidelines stipulate that this agreement in of itself cannot be considered in the SS-8 determination process, as we are obligated to base our decisions on the actual relationship between the parties, which is the controlling factor, and not the terms of the contract either oral or written. The relationship between the parties ended when the firm terminated the worker.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise his services, but he responded to your ad listed on a job board. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.