

SS-8 Determination—Determination for Public Inspection

Occupation 02ENG.22 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

Information provided finds the firm builds electromechanical systems to inspect parts (such as car chassis). The worker had been retained by the firm as an application engineer for 2014-2015. The firm reported the income on Form 1099-MISC because they felt, since the job was only temporary, he was an independent contractor. The firm stated they had a large order come in that they needed assistance with; it exceeded the capacity of their two permanent application engineers. He held a Master's degree in Mechanical Engineering. The job was only to be temporary; there was no promise of employment after that. The firm provided a copy of the Work for Hire Agreement; it stated the position was effective December 22, 2014. Nowhere in the agreement does it state he was hired for a specific project, nor was there an end date. The worker was provided with software training, as it was custom software written by the firm. They contracted with the worker to integrate and test the systems for a March 2015 delivery; technical problems caused the schedule to be delayed. Because of the extension they asked the temp agency to hire the worker to avoid any potential issues with the tax classification. The firm was responsible for resolving issues. The firm provided a copy of the report provided to them of the work in process, issues etc. Services were performed on firm premises seventy percent of the time and thirty percent at a partner shop, seven hours a day on site with partner, ten hours a day for integration. The firm stated the worker set his own hours. Services were performed personally. Work assignments were given from the firm owner. The firm stated they provided the system he was working on. He was paid by the hour and travel expenses. The customer paid the firm. Either party could terminate without incurring a penalty or liability. The firm stated the worker was fired.

The worker stated he was under instructions from the project manager and other technicians to see what needed to be done. There was also a webpage that displayed a list to do for a particular project as well. He reported to his boss or the project manager if there were any issues. He indicated no reports were required. He usually worked forty hour work weeks, unless they had to meet a deadline. It could be up to sixty hours a week. He performed services eight to four or twelve to eight, different shifts were possible. During the first three months services were performed on the firm premises. In April they completed the project in [REDACTED], he stayed there for a month. Weekly staff meetings were held to discuss the progress of projects and what to do next. Services were to be performed personally. The worker stated the firm provided the equipment to perform the job. He had to provide nothing. The worker stated he was paid by the hour and reimbursed for hotel and food expenses when in [REDACTED]. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He stated they didn't have any new jobs so he was laid off.

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 United States. 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

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. 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. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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. 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. If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer.


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.