

SS-8 Determination—Determination for Public Inspection

Occupation 02ENG.25 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 indicated the firm is a [REDACTED], a global petroleum and chemical company. The worker had been offered in late December 2012 with an employment contract with the firm to provide services as an electrical engineer. The work assignment was to begin January 2, 2013. The contract promises a base salary of Fifteen thousand, five hundred dollars per month, with applicable tax withholdings. The firm also would pay housing per-diem of One hundred-nine dollars per day, and a vehicle allowance of Twenty-five dollars per day. There would not be paid vacations, sick pay or personal leave days. He would be provided Holidays, and work hours and Transportation to the business location. Any leave or days off shall be taken in coordination with his supervisor and with his or her prior approval. [REDACTED] manuals, handbooks and policies are subject to unilateral change by [REDACTED] and except as specifically provided elsewhere herein. The worker indicated he received the scope of the Project "[REDACTED]" and not specific assignments. He determined how he performed his services based on the firm's standards. He would contact the project manager if there were any issues. He prepared engineering drawings, technical specifications and project execution documents. His work hours were seven am to five pm with every other Friday off. The work schedule was called 9/80, which means 80 hours of work in 9 days. He performed 97% of the work on firm premises, the other 3% from his temporary housing in [REDACTED]. He was to perform his services personally. The firm provided all office equipment, secretarial help etc. The worker indicated he leased an apartment for temporary housing in downtown [REDACTED]. He incurred housing, utilities, transportation, food and personal expenses in maintaining a 2nd home for the purpose of work for the firm. The firm reimbursed for out of town travel. He was paid a salary per contract. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The work ended when the contract ended.

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, the fact the worker feels he was an independent contractor, because he previously worked for the parent company, obviously 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

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.

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 occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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. 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. 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.

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. The worker performed services on a full time basis, on firm premises for the firm. The firm guaranteed the worker a set salary, plus a housing per-diem to offset the worker's expense of housing, in order to reside in [REDACTED]. The worker was also provided transportation allowance, plus expenses reimbursed. Although he was not provided with paid vacations, he was given Holidays and was required to follow the firm's manuals, handbooks and policies therein.