

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW Law Staff	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is a law practice. The worker was engaged as a paralegal. She received a 2016 Form 1099-MISC for her services. There was no written agreement.

Both the firm and the worker agreed that the firm provided instructions and work assignments via emails, meetings, and in-person, as well as provided on-the-job training. Both parties agreed that the firm determined the methods by which the assignments were performed and that the firm/firm's office manager would be contacted if any issues or problems arose. There were no written reports submitted by the worker. Her work routine consisted of working about eight hours daily, performing paralegal services, at the firm's location. The firm noted that the worker was required to personally provide the services.

Both the firm and the worker agreed that the firm provided materials, equipment, and supplies as well as the workplace and workspace. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. She received a two-week initial advance. The customer paid the firm. The firm established the level of payment for services and carried workers' compensation insurance on the worker.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm did not know. The relationship ended when the worker quit after a brief period of time.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was engaged as a paralegal to provide her services for the firm's law office. The firm provided some initial instructions as well as training. In addition, the worker worked set scheduled hours at the firm's office location. 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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker also was required to provide the services personally indicating that the firm was interested in the methods used to accomplish the work as well as in the results. While the worker's services were for a brief period of time, her services were performed continuously and not just on a one-time basis. 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.

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. The worker had no investment in the firm's office or equipment. She simply received an hourly rate of pay and had no other economic risk other than the loss of this compensation. 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.

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. There were no benefits and there was no written agreement. When the worker performed her paralegal services for the firm's law practice, she was not engaged in a separate business venture. The fact that her services were temporary and brief also did not make her self-employed. 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 the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.