

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW Paralegal Worker	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 in the business of operating a law office. The worker was engaged as paralegal. She was initially engaged part-time until she requested (and was given) more hours. She received a 2017 Form 1099-MISC for her services and continued to work into 2018 as well. There was no written agreement.

The worker noted that she received one day of instructions. She was given log-in and passwords as well as visual instructions on filing and general duties; the firm, however, indicated that no training or instructions were given. The worker received her work assignments via text, email, and through the task section of an office program; the firm noted she sometimes received her work assignments verbally. Each party indicated that the other determined the methods by which the assignments were performed; only the worker noted that the firm would be contacted if any issues or problems arose. Both parties agreed that there were no required reports. Her normal work schedule was during the firm's business hours at its office location; however, the firm indicated that she made her own schedule and was allowed to work from home as well. There were monthly staff meetings; the firm disagreed. Both parties agreed that the worker was required to provide the services personally.

The firm indicated that it provided only the computer. However, the firm also provided the office, a workspace, computer, associated programs, and office supplies when the worker worked in the office. The worker had travel, parking, cell phone, and clothing expenses. The worker was paid by the hour and had no other economic risk. The customer paid the firm. The firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The firm indicated that the worker's resume noted that she was a freelance secretary and that she was looking for other jobs. The relationship has ended.

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 firm operated a law practice and engaged the worker as a paralegal. It is acknowledged that the worker had previous work experience as a paralegal, and likely did not require extensive instructions. However, she would have needed directions as to what her scope of duties entailed, and what was required when given her work assignments. The firm obtained the clients and remained responsible for the work produced by the firm. The worker performed her services at the firm's premises and from her home. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. In addition, the firm indicated that the worker did not have set scheduled hours; however, 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. It is reasonable to assume as the worker was processing work for the firm's clients, there were need and time deadlines. The worker's services were continuous although for a brief period of time. Her services were not just a one-time occurrence. 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 received an hourly rate of pay by submitting her hours to the firm and had no other economic risk other than the loss of that 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. The worker was a paralegal for the firm's law practice. When doing so, the worker was not engaged in a separate business venture. The worker may have listed 'freelance secretary' on her resume; however, the worker had no business presence. Her work would be subject to the firm's oversight as she performed her services for the firm who remained ultimately responsible to their clients. 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.