

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 firm. The worker was engaged as a paralegal. She received a Form 1099-MISC for her services in 2015 and 2016. There was no written agreement.

The worker was trained by the firm's outgoing paralegal; the firm indicated no training was involved. Both parties agreed that the firm's office attorneys gave the worker her work assignments. According to the worker, the firm determined the methods by which the assignments were performed. Both parties agreed that the firm would be contacted if any issues or problems arose. Both also agreed that there were no required reports. The workers routine was to work daily at the firm's office; she clocked-in/out using time cards, had weekends and holidays off. There were meetings to attend. Both agreed that the worker was required to personally provide the services; the worker added that only the firm hired and paid any substitutes.

Both the firm and the worker agreed that the firm provided the office, computer, office equipment and supplies. Both parties agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The worker did not establish the level o payment for services.

The firm indicated that there were no benefits though the worker mentioned paid holidays and bonuses. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. 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 obtained the clients. The worker was engaged as a paralegal to perform the various services needed by the firm to service its clients. She answered phones, filed court documents - all work performed according to the firm's directions. The worker indicated that she worked set scheduled hours. While the firm indicated that her schedule was flexible, 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. Also, if a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. All of the worker's services for the firm were performed at its office. 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. While the worker's services were for a brief period of time, those services were continuous. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists.

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 office or its furnishings or equipment. She received an hourly rate of pay 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 was no written contract/agreement. The worker was engaged as a paralegal for the firm's law practice. While the firm pointed out that she could work for others; it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. When working for the firm, the worker was not engaged in a separate business venture. 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.