

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW.3	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 an operating law firm. The worker had been retained as an attorney for the firm. The time period in question is January through July of 2012. The worker has filed the SS-8 request as she feels as of January 1, 2012 she was in fact an employee of the firm and not an independent contractor. The firm reported the income earned on Form 1099-MISC.

The firm states [REDACTED] was a licensed attorney and admitted to the [REDACTED] Bar. She was not provided any training by the firm and came in already possessing the skills (ie, bar license and law degree). She did not have any investment in any office equipment or facilities. She did not benefit or suffer from any profit or loss incurred by the firm. She made no financial investment in the firm and was not expected to. The firm stated she maintained her position with [REDACTED] and did work for that company, in which she is Vice President. She was free to perform legal work for anyone outside the firm and is believed to have done so. The firm indicated she requested to be a contractor and that she receive a 1099. The worker decided when and where to work. She was not required to be at the office. She had an access key and was able to come and go at will. She often worked from home; she was provided a remote log in link so that she could access documents through a web portal. She could also access webmail remotely. Excluding any Court ordered deadlines, or those deadlines requested by the clients of the firm, she could perform work on her own schedule. She could take vacation any time without permission. The firm indicated the worker used her own personal e-mail [REDACTED] to conduct business and communicate with other lawyers. She used her own laptop. No benefits were provided. She was covered by liability insurance so the firm could be covered in the event a client brought a claim against the firm for the work done on its behalf by a contractor. The pay often varied from month to month. The firm stated the clients paid the firm. She was reimbursed for expenses she incurred that were properly expenses as a legitimate business expense and if they directly related to the firm/billable to a client during the time the relationship existed. The firm stated once the relationship ended, she advised she would challenge the 1099 status if the firm did not pay her a set sum. She also brought a similar claim before the [REDACTED] Dept. of Revenue. The firm stated all work had been performed under the firm's business name.

The firm provided a copy of the [REDACTED] decision found her not eligible to unemployment. However, the referee did not get any information from the worker, so it was ordered for another proceeding. Dated [REDACTED]. The firm provided the transcript of the conversation at one of the meetings. In those transcripts, the firm stated yes if there was a new procedure she did provide guidance. The worker utilized the firm's templates and letter format. The firm did review the work, when she felt it was required. The state did not overturn their decision.

The worker indicated she was provided training in Foreclosures as she had no prior experience, in the process. Such as what the counts should be how to move through each step of the foreclosure process. The worker stated she was required to follow the foreclosure checklist, given from [REDACTED] (copy provided). The worker agreed as a salaried she was able to choose her hours, which were generally between eight am and eight pm. She also worked weekends when necessary. She stated she was required to attend case status meetings. The worker indicated she was required to perform services personally. She was able to hire with the approval of the firm only. She did not pay anyone. She indicated the firm provided all equipment and supplies, and reimbursed for travel expenses, gifts for clients, office cleaning supplies etc. She was paid a set salary per month, plus parking. She was also provided a key to the office and provided with all passwords. The clients paid the firm. The worker stated the firm was in charge of billing and collection, they were their clients. The firm provided her with business cards, which shows her company e-mail address. The worker agreed all work was performed under the firm's business name.

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.

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. Information provided by both parties, have indicated the firm directed and provided guidance in the services provided. The firm, in evidence it provided to the State of Florida, stated they provided the templates and checklists and reviewed the work performed. The firm stated she provided guidance when it was necessary. The firm indicated all work was performed under the firm's business name and under the firm's liability insurance. The firm also provided professional business cards with the worker name and company e-mail address, which represented her as an employee of the firm.

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 firm's opening information provided to us stated the worker did have any investment in any office equipment or facilities, or in the firm. The worker was provided office space, a key to the office a set monthly salary and reimbursed for travel and expenses. The firm maintained control of billing and collecting from their clients.

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. The firm had indicated the worker was vice president of [REDACTED]. The services performed were legal services and had no relationship to a zipline business owned by the worker. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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.