

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW.8	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

The firm is a professional corporation operating a law firm. The firm engaged the worker as an attorney. There was no written agreement between the two parties.

The worker stated the firm gave her instructions on what to gather from the clients. The worker received her assignments from the firm. The firm determined how the assignments should be performed. The worker ultimately relied upon the firm to resolve her problems and complaints. The worker stated she was required to submit a timesheet showing billable hours and status reports on clients. The firm stated the worker could set her schedule and the worker stated she began her services at 9 a.m. and her day ended according to the needs of the firm. The worker performed her services at the firm’s location. The worker attended weekly staff meetings. The worker was required to perform the services personally.

The worker was provided with a location, office equipment, supplies, and a Westlaw account to perform her service. The firm stated the worker did provide her own personal computer. The worker did not lease any space to perform their services. The worker was paid \$80/hr. The clients paid the firm directly. The firm established the level of payment for the services provided to the clients.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others while the firm contended the worker did provide similar services for others. The worker provided her services under the firm’s business name. The firm discharged the worker from her services.

The worker provided a copy of a business card listing her as an attorney performing services under the firm’s name. This showed the worker had an e-mail address through the firm’s e-mail account. The worker provided a copy of the [REDACTED] showing she was found to be an employee.

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer’s instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the firm did assign the worker clients according to the firm's work load needs which demonstrated control over the worker's services. The firm ultimately resolved issues that came up for the worker or for clients of the firm as an employer. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. The firm had the financial investment since they provided the location and the majority of office equipment and supplies the worker needed to perform her services. The fact the firm was responsible to collect the amount they charged to the clients demonstrated it was the firm that had the potential to suffer a significant loss as the worker was guaranteed an hourly rate as an employee. The worker was an attorney handling the firm's clients under the firm's business name which showed the worker's services were integrated into the firm's daily operation. The fact the firm retained the right to discharge the worker showed control through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989