

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW.53	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 provides legal and technical assistance to low income and English as a Second Language (ESL) taxpayers throughout [REDACTED]. The worker was engaged by the firm as a paralegal. The firm did not withhold taxes from the worker's remuneration in 2012 through 2016.

It is our usual practice in cases of this type to solicit information from both parties involved. We requested information from the firm concerning this work relationship. Because we received no reply, we are issuing this determination based on the information available to us. Any other conditions that were not known or furnished may change this determination.

The worker submitted multiple agreements between the parties stating, among other things, that the worker "will be employed" for the stated time periods as support staff; the hourly rates for each type of service at 40 hours per week; timesheets should be submitted by the 15th and end of month with payments on the 5th and 20th of each month; the worker's "salary" is paid out of [REDACTED] funds, and therefore, the worker agrees to comply with personnel policies and procedures, rules, regulations, guidelines, etc.; and either party may terminate the contract by written notice to the other party.

The worker stated that the firm provides her with her work assignments and determines the methods by which she performs them. If problems or complaints occur, the worker contacts the firm for resolution. The worker is required to complete reports, including her time reports. She follows a routine schedule and performs her services on the firm's premises or at its outreaches. The worker attends staff meetings, statewide conferences, and program engagement meetings. She is required to perform her services personally.

The firm provides the office equipment and supplies, and the property. The worker uses her own markers, highlighters, and pens. The worker does not lease space, or incur expenses in the performance of her services. The firm pays the worker at an hourly rate. Customers pay the firm directly at prices established by the firm. The worker did not indicate an investment in the firm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

Analysis

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 provides the worker with her work assignments and determines the methods by which to perform them. It retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker follows the schedule set by the firm and performs her services on the firm's premises. 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. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 firm pays the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retains control over the financial aspects of the worker's services.

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 performs her services on a continuing 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. The worker performs her services under the firm's name. She is not engaged in an independent enterprise, but rather the paralegal services the worker performs are a necessary and integral part of the firm's mission of providing legal and technical assistance to low income and ESL taxpayers. 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 business. Although the firm does not provide benefits to the worker, both parties retain the right to terminate the work relationship at any time without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.