

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW.56	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 indicates the firm is a law firm that specialized in foreclosure defense. The worker performed services as a paralegal with the firm for tax years 2014 and 2015. The firm reported the income on Form 1099-MISC, stating the firm business was just starting and she could not afford regular employees, so she utilized people when they were available. The firm indicated services were performed on an as needed basis and that the worker also performed services for her husband's business at the same time. His needs came first and she worked around his schedule. When at the office she was assigned work to do. The worker was a highly skilled paralegal. The firm indicated she was paid a set salary regardless of hours worked. The firm indicated services were performed at her home 30% of the time and the office 60% of the time, sometimes doing service using her car. The firm stated both parties provided paper, computer, fax and printer. The firm paid the same weekly amount, plus parking. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker had health issues which prevented her from working.

The worker agreed she did paralegal services for [REDACTED]. She provided a copy of her business card from [REDACTED], which represented her as a paralegal. The worker the firm provided instruction on all work performed by the worker daily. The work was performed using the firm guidelines, formats and forms. Assignments were given on a daily basis. She indicated she performed services Monday through Friday, (with some overtime) but did not indicate the hours worked. The worker indicated all services were performed on the firm premises. She was required to attend staff meetings. Services were to be performed personally. The worker indicated the firm provided all equipment and supplies. She was paid a set salary, with pay raises, copies of pay checks showing weekly payments starting at three-hundred fifty dollars increasing to six-hundred fifty dollars per week. The worker agreed the clients paid the firm. Either could terminate the work relationship without incurring a penalty or liability. She indicated she was fired

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.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

ANALYSIS

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.

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.

Analysis

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.

Workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

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.

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. 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. All services were performed as assigned and directed by the firm, for the firm's clients. Whether services are performed on a full time basis, or a part time continuing basis, as long as it is done under the direction of the firm the worker is an employee. One has to own and operate their own business, in order to be deemed an independent contractor. The worker was paid a set weekly salary, regardless of the hours worked. Therefore she was not in a position to incur a loss of income. Documentation provided also shows she was given pay increases throughout the work relationship.