

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	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 distributor of white boards for hospitals. The worker was engaged to perform services as an administrative assistant, services included data support. The firm treated the worker status as both independent contractor and employee, issuing to the worker a Form 1099-MISC and a Form W-2 at year-end reporting the monies received for her services as both wages and non-employee compensation.

The worker was skilled in data support, and received training/instructions from the firm on where to find data for the reports. The firm and worker both determined the work methods by which to perform the services. The firm was to be contacted regarding work related problems/complaints that needed resolution. The firm required the worker to perform her services personally at its location. The worker was required to provide the firm with sales team reports, and to report the number of hours she worked weekly. She was not required to attend meetings.

The firm provided the facilities, equipment, tools, and supplies needed to perform the services. The worker incurred travel expenses in the performance of her services for the firm. The firm reimbursed for expenses incurred regarding mileage and supplies. The worker's remuneration was based on an hourly wage as determined by the firm. Clients made payment to the firm for services rendered. The worker did not incur economic loss or financial risks related to the services she performed for the firm. The firm did not cover the worker under workers' compensation insurance.

Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did she advertise her services personally to others while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies, and she represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. You may visit www.irs.gov to obtain a copy of Publication 4341 for correction guidance.