

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

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

Information provided indicates the firm is a non profit organization that honors athletic achievements and raises funds for youth sports. The worker was hired as an intern to perform various administrative and clerical duties in 2017. The firm reported the income on Form 1099-MISC, the reason being, they are given general assignments and work a very irregular schedule. They make independent decision about what to work on. Occasionally some work is done from home. Pay frequency makes it difficult to adhere to the regular payroll deadlines. The firm indicated they would report to the firm for any issues. There is no regular daily routine. Days worked and hours worked are flexible depending upon their schedules. Services are performed on the firm premises or from their home. No meetings were scheduled. The worker was to perform the services personally, the firm provided general office supplies, the worker provided his/her own laptop. The worker was paid by the hour and some travel costs are reimbursed. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the intern decided to leave.

The worker indicated he worked the same scheduled hours every day, four times a week. All work was performed on the firm premises. Work assignments were given by the firm on a daily or weekly basis in the office. He would arrive between nine and ten am and work on whatever was assigned for the day. He left between three and four pm. He attended staff meetings when called. He agreed the firm provided the office space, supplies and firm sweatshirt. He provided his own laptop. He agreed the firm reimbursed for transportation expenses to any off site events, and he was paid by the hours. He was referred to as an intern of the firm. He indicated he left after giving a two week notice.

ANALYSIS

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

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. An intern, is a person in training, indicating they do not own their own business, to provide services to others. The work was performed as instructed and assigned by the firm. The fact the schedules may have been irregular or sporadic does not make the individual an independent contractor.