

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Worker	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

The firm is in the business of operating a pet clinic. The worker was engaged to perform data entry and to prepare county tag sale at end of the month. She received a 2017 Form 1099-MISC for her services and continued to provide her services into 2018 as well. There was no written agreement.

Both the firm and the worker agreed that the firm did not provide specific training or instructions. The firm assigned the worker to her tasks; the worker added that there were set daily tasks to be performed in a specific order according to the firm's directions. Each party indicated that the other determined the methods by which the assignments were performed. Both noted that the firm would be contacted if any issues or problems arose. The worker submitted her weekly time sheet/invoice; the firm noted that she submitted the monthly tag report. The worker noted that she worked set scheduled hours and days, performing the routine daily tasks as directed. The firm described her routine as entering data, making phone calls, packaging and shipping meds. Her services were performed at the firm's pet hospital location; the firm added that she worked from her home as well. Only the worker noted that there were staff and sales meetings. She was required to provide the services personally according to the firm.

The firm provided supplies, equipment, and the facility. The firm noted that it supplied nothing and that the worker supplied a laptop. The worker bought miscellaneous items for which she was not reimbursed. Both parties agreed that she was paid by the hour and had no other economic risk. The customer paid the firm. The firm noted that it provided workers' compensation insurance for the worker. Both parties agreed that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm thought that she did. The relationship has ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

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 retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm was operating a pet care clinic, and engaged the worker for some administrative duties such as data entry and preparing monthly reports. While her tasks became part of a routine, she performed those duties according to the firm's directions. 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.

The worker worked from the firm's facility. While the firm indicated that the worker came and went as she pleased; however, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee.

In addition, the worker's services were continuous in nature. 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.

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. It was the firm that had the investment in the facility and the equipment. The worker received an hourly rate of pay and had no other economic risk. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

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. There were no benefits and there was a written agreement.

The worker was engaged to provide administrative support services for the firm's pet clinic. When doing so, the worker was not engaged in a separate business enterprise. Her services instead were essential to the firm's continuing 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.

The firm indicated that both parties agreed to the independent contractor relationship. However, in *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B. 174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 see Publication 4341 for guidance and instructions for firm compliance.