

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Receptionist	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 worker initiated the request for a determination of her work status; she was interviewed and hired as a receptionist from January 2016 to March 2018. The firm's business is a law firm.

The firm's response was signed by the president. The firm is a law firm and the worker provided office clerical services from July 2017 to March 2018. The firm indicated the worker was told before taking the job that this was an independent contractor position.

An attempt was made to contact the worker to verify the starting date, but, without success. Information submitted indicated the Form 1099-MISC was issued for tax year 2017.

The firm and worker responded that the worker was given training and instructions for the job assignments of answering phones, filing, book updates, and the routing of incoming mail. The firm stated the worker determined the methods by which the worker's services were performed; the worker disagreed, indicating the firm disseminated the work and how it would be accomplished. Any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered at the firm's location. The firm indicated the worker's hours varied because of other job commitments and personal matters; the worker stated she worked during the hours determined by the firm. Both parties acknowledged the worker was required to perform the services personally; and, any additional personnel were hired and paid by the firm.

The firm provided everything; computer, scanner, and phone. The worker furnished nothing; the worker did not lease equipment and did not incur expenses in the performance of the job. The firm and worker concur that the worker was paid an hourly wage; the clients paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm indicated the worker was at risk for a financial loss in this work relationship if there was loss or damage to equipment; the worker responded that she was not at risk for a loss. The worker responded that the firm established the level of payment for services provided or products sold; the firm stated it was a mutual agreement.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm noted the worker was a shift manager at one of her other jobs and a retail associate for the other job.

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.

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.

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.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor 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.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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. For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of social security tax withheld by another employer.