

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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the worker**/firm**/payer concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is yoga studio providing space for independent contractors to meet with students. The worker was engaged to assist and plan special events and to provide support to yoga teachers in 2017. The firm believes the worker was an independent contractor while performing services for them because she created her schedule, she worked with her creative ideas, and her services went towards college credit. The firm reported the worker's earnings on a Form 1099-MISC.

The firm states they provided no training or instructions to the worker. The worker received verbal assignments and the firm states the worker determined how she performed her services. The worker was required to notify the firm if any problems or complaints arose for their resolution. The firm states the worker's routine depended upon the event. The worker performed her services at the firm's yoga studio or at the location of the event. The firm states the worker was not required to submit reports or attend meetings.

The firm provided an on-site computer and web-based program to the worker in order to perform her services. The worker did not incur expenses, she was paid at an hourly rate the firm states they determined, and she did not have an opportunity to incur a loss as a result of her services.

The worker was not eligible for employee benefits. There was no agreement that prohibited competition between the firm and the worker. The worker did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability. The firm states the relationship ended when the internship was complete.

Analysis

As in this case and 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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm may have provided the worker with some freedom of action as to when she performed her services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.