

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

The payer is a service club. The worker is a Corporate Secretary of the club and performs secretarial services. The club reports the worker's remuneration on Forms W-2, but is considering changing her status to an independent contractor with no evident changes in the worker's duties or the work relationship.

Information from the parties supports that the club relies upon the worker's prior training and experience to perform her services. The worker's work assignments are largely self-determined, but also as requested by members of the Board of Directors. If problems or complaints occur, the worker contacts the club President or another club officer for resolution. The worker is responsible for board minutes, treasurer's reports, attendance reports, etc. She generally performs her services from her home, works part-time, and determines her own schedule; however, she is required at weekly meetings, board meetings, specially called meetings, etc. The worker is required to perform her services personally.

The club provides limited office supplies and postage for mailings. The worker provides her home work space, computer, typewriter, and copier. The worker incurs expenses for home utilities and travel. The club pays the worker on a salary basis. It covers her under workers' compensation. Neither party indicated an investment by the worker in a related business.

The club does not make benefits available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability. The worker does not provide similar services for others. There is no evidence submitted showing the worker advertises her services or maintains a business listing.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The club relies upon the worker's prior training and experience to perform her services. 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. The worker performs the majority of her services in her home. 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. The worker is required to perform her services personally, meaning that she cannot engage and pay others to perform services for the club on her behalf. 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. These facts show that the club retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services she provides. There is no evidence to suggest the worker's office equipment was purchased exclusively for business purposes. Presumably these items are also used by the worker for her personal needs. Therefore, they are not considered a significant business investment. The club pays the worker on a salary basis, and the risk of loss is absent. These facts show that the club retains control over the financial aspects of the worker's services.

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 performs her services on a part-time, continuing basis. A continuing work relationship, even on a part-time basis, indicates an employer-employee relationship. The worker is not engaged in an independent enterprise, but rather the secretarial services the worker performs are a necessary and integral part of the club's business. 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 business. These facts show that the club retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the club has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.

Compensation paid to a corporate officer is subject to income tax withholding if he or she is a common law employee. For FICA and FUTA purposes, statutes define an employee as "any officer of a corporation (see IRC 3121(d)(1) and IRC 3306(i) respectively)."