

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.1 OfficeWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a title company in the business of transferring properties. The worker provided her services to the firm in 2010 and 2011 as an escrow officer preparing the final paperwork, ensuring the transactions were executed correctly, walking the firm's customers through the closing process, and she received the Forms 1099-MISC for these services.

The firm trained and instructed the worker to do all the tasks the job required such as; two weeks of training on the firm's computer system, and the escrow software. Both parties agree that the worker received her assignments from the firm's branch manager and the branch manager determined the methods by which the assignments were performed. If problems or complaints arose, the worker was required to contact the branch manager and the branch manager was responsible for problem resolution. The worker stated that the firm required her to submit monthly reports which included the transactions closed and the total closings. The worker had a set schedule working Monday through Friday, beginning her day at 8:00AM and finishing her day at 5:00PM. She provided her services personally on the firm's premises 100% of the time.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; the fax machine, phone, paper, computer, computer software, and the office. The worker did not lease any equipment and there were no business expenses incurred in the performance of her services. She received an hourly wage for her services. The firm's customers paid the firm for the services the worker provided. The firm established the level of payment for the services the worker provided. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker. The worker did not provide similar services to others during the same time period. The worker maintains that there was a conflict of interest if she worked for another firm. She provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the job was completed and the worker was laid off.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Although the firm submitted a Form W-9 believing that this is indicative of an Independent Contractor status, the fact remains that the Form W-9 is simply used as an information document to verify a Taxpayer Identification Number, or a valid Social Security number and has no bearing on the SS-8 determination process. The Form W-9 is also used to indicate that the worker is not subject to "Backup Withholding" Backup Withholding is a specific type of withholding and should not be confused with Federal Income Tax withholding.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm trained the worker regarding the performance of her services. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. 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 facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered her services personally. 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. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Her pay was based on an hourly rate. 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. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.