

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.2 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 in the business of providing consulting services for architecture firms. The individual provided her services for the firm in 2011 as an office worker and the monies she received for the services she provided were reported on Form 1099-MISC.

The firm trained the worker at the beginning of the relationship to do all the tasks the job required such as filing, office correspondence and paper work editing. The worker received her assignments on a daily basis from the firm verbally, by e-mail or by telephone. The firm determined the methods by which the assignments were performed and if problems or complaints arose as a result of the worker's duties, the firm was responsible for problem resolution. The worker had a set schedule beginning her day at 8:30AM and finishing at 2:30PM. She provided these services three days per week. She provided her services personally on the firm's premises and if substitutes or helpers were needed it was the firm's responsibility to hire and compensate the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; the computer, office, office supplies, and the computer programs. The worker did not need to purchase or lease any significant equipment used in providing her services. The firm determined the fees to charge its customers and the customers paid the firm directly. The firm paid the worker an hourly wage for the services she provided.

The firm did not make any benefits available to the worker. The worker did not perform similar services for others during the same time period. The worker provided her services under the firm's business name and for the firm's clients and was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability. In fact, the relationship ended when the worker resigned to return to school.

Analysis

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 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. 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.

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 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 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. 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. 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'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.