

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.7 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 partnership in the business of real estate title and closing services which engaged the worker as an office worker in 2011. There was no written agreement between the parties. The worker had previously performed the same services for the firm under previous ownership. She was treated as employee and received a Form W-2 for every year she provided services. The owners for tax year 2011 issued her a Form 1099-MISC for the same services.

The worker did not receive training from the firm as she had been trained by the previous owner to do the necessary office work. The worker received verbal and written instructions regarding the services to be performed directly from the owner of the firm. The worker stated the owner of the firm always supervised and controlled how her work was done. She usually worked 7.5 hours per day. Some days she did not work she continued to check emails and mail, prepared for closings, answer the telephone and remained in contact with owner as to when she wanted her to work. The firm determined the methods by which the assignments were performed. The owner of the firm was also responsible for problem resolution. The worker was required to submit reports. She performed the services on the firm's premises. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. Her services were an integral and necessary part of the services the firm provided to its customers. The firm hired and paid any substitutes or helpers.

The firm furnished the worker with office space, supplies and equipment, at no expense to her. The worker did not lease equipment. The firm determined the fees to be charged to its clients. The worker did not incur significant business expenses while providing services to the firm. The worker was paid an hourly wage. The firm's customers paid the firm. The firm established the level of payment for the services provided by the worker and the products sold. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker received vacation pay, health insurance, and paid holidays. Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. She worked exclusively for the firm. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's clients. The relationship between the ended when the firm was given back to the previous owner who did not reopen the business.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise her services. This is a strong indicator that the worker is not an independent contractor. 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.