

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.15 Administrative Assist	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 real estate sales and development business and hired the individual as a bookkeeper for the years 2012 and 2013. The worker stated the monies she received for the services she provided were not reported on Forms 1099 MISC or Forms W-2.

The worker provided similar services for the firm in prior years. The worker was hired for the bookkeeping position after being contacted by the firm. The firm provided the worker with instructions on which tasks to perform and she received training on creating construction budget worksheets and project lists. She stated she received her assignments from the firm and they determined the methods and the means in which she provided these services. The worker provided these services on the firm's premises on a schedule which was determined by the firm and she was required to provide these services personally.

The worker's responsibilities included answering phones, creating filing systems, creating worksheets and cost analysis, typing correspondence, copying and filing contracts and creating and maintaining information. If substitutes or helpers were needed, it was the firm's responsibility to hire and pay them. If problems or complaints arose as a result of the worker's services, the firm was responsible for problem resolution. Although the firm stated the worker provided her services on a part time basis she provided her services for the firm's business during the firm's hours of operation on a schedule which was mutually determined.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; the computer, software, office supplies, printer and office space. She did not need to purchase or lease any significant equipment used in providing her services. The firm determined the level of payment and the worker received an hourly wage.

The worker ascertained that she did not provide similar services for others and did not advertise her services to maintain a business of a similar nature while providing her services for the firm. The worker provided her services under the firm's business name and she stated she 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 was terminated.

Analysis

The worker had the skills necessary to provide her services. 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 or instruction 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 performed 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 wage. 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.

She did not have any financial investment in a business related to the services performed and could not have incurred a business profit or business loss in the performance of her services for the firm. The worker provided her services under the firm's name, and her work was integrated into the firm's business and hours of operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

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.