

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.18 AdministrativeAssist	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 veterinarian in the business of providing services via house calls. The worker provided her services to the firm in 2011 through 2013 as an administrative assistant with services including scheduled appointments, ordered and mailed products, prepared invoices, billed the firms' clients, prepared marketing materials, edited memos and articles, personally assisted the firms' owner with daily tasks, and 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; how to use the firm's computer and filing system, how clients' invoices were billed, ordering supplies from the vendors, public relations/marketing work, and how to use [REDACTED]. The worker received her assignments from the firm via e-mail, phone, fax, or daily instructions left on her desk, and the firm determined the methods by which the assignments were performed. The firm maintains that the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm contends that the worker was responsible for problem resolution. The worker's schedule varied, she was able to determine her own hours. In fact, the firm stated that the worker made up her own schedule as required. She provided her services personally on both the firm's premises, and remotely from her home. The firm expressed that the worker did not provide her services personally. If additional help was required, the firm's owner stated that she was capable of providing the services.

The worker stated that the firm provided all the necessary supplies and equipment the worker needed to provide her services such as; the office computer, printer, pens, paper, stapler, packing materials, and business credit cards for purchasing supplies and materials. The worker provided the personal computer with remote access to the firms' office systems for after business hours. The firm explained that the worker provided the computer, paper, ink, toner, pens and pads. The worker received an hourly wage for her services. The firms' customers paid the firm for the services the worker provided. The worker provided her services under the firm's business name. She did not assume any financial risk in the relationship. The worker indicated that the firm established the level of payment for the services the worker provided. The firm expressed that the worker established the level of payment for the services she provided.

The firm did not make any benefits available to the worker. The worker did not perform similar services to others during the same time period. She provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker was terminated.

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.

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 instructed the worker regarding the performance of her services. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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 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. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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 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. 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 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. Either the firm or the worker could terminate the agreement. 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.

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.