

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.31 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 worker submitted a request for a determination of worker status in regard to services performed for the firm from March 2008 to February 2011 as an administrative assistant. Duties included opening new accounts, greeting clients, e-mail and mail correspondence, incoming and outgoing mail distribution, purchasing office supplies, incoming calls, filing, faxing, scanning documents, appointment making, travel arrangements, etc. The firm issued the worker Form 1099-MISC for the years in question. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC as services were performed pursuant to a written employment agreement.

The firm's response stated it is an incorporated holding company. It handles various business activities and associated business and operating expenses incurred by business activities including private and public company consulting, registered broker dealer activity through a securities firm, and rental property/income expense record keeping. The worker was engaged as an assistant and receptionist. She handled various paperwork for the firm, worked and processed paperwork for brokerage customers, and interacted with other brokers. The firm followed guidelines for an independent contractor and explicitly explained to the worker those requirements and the differences in associated work and activities. The worker received additional fees to compensate for her being an independent contractor. There was no written agreement other than a Form W-9.

The firm stated it did not provide specific training or instruction to the worker. The worker received work assignments from the firm, other brokers, and from other companies. The worker established her own time line and priority after tasks were given. The worker was required to contact the firm, other brokers, and clients if problems or complaints arose. The firm required the worker to provide reports related to review and distribution of paperwork. Meetings were not required. The worker set her own schedule and informed the firm, at her discretion, as to time taken off. The worker routinely worked Tuesday through Thursday; Monday and Friday were less time and frequently taken off. Services were performed at the firm's office. The firm required the worker to personally perform services. Hiring and paying substitutes or helpers was not applicable. The worker stated the firm provided daily instruction each morning at a meeting held to discuss tasks and when they needed to be completed. The firm determined the methods by which assignments were performed and assumed responsibility for problem resolution. The worker's schedule was Monday through Friday; 8 am to 5 pm, with a break for lunch.

The firm provided an office cubicle, phone, computer, and office supplies. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in performing services for the firm. The firm paid the worker typically biweekly; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The worker stated the firm paid her salary. Customers paid the firm. The firm established the level of payment for the services provided.

Benefits were not made available to the worker. The work relationship could be terminated by either party without incurring liability or penalty. The worker did not advertise. The firm stated there was no agreement prohibiting competition between the parties. The firm represented the worker as an assistant to its customers. The work relationship ended due to the worker's extended absences, which impacted her productivity, and the poor economy. The worker stated she did not perform similar services for others. The firm terminated her via e-mail.

Analysis

(Continued)

-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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business. Whenever an individual is working under an internship or job shadowing position, it indicates they had no prior knowledge or are in the position to gain additional training and knowledge in that field. The worker did not own her own grooming business, all services were performed, on the firm premises, under the firm's business name and reputation, as trained and instructed by the firm.