

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.33 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 manufacturing and installing signs. The worker was engaged to provide invoice processing and accounts payable services as well as to cut checks and answer phone questions on related matters. She received a 2013 1099-MISC for her services. There was no written agreement.

The worker indicated that she was told how to pay invoices and how to use firm’s computer; the firm indicated that the worker was told what needed to be done. Both parties agreed that the work assignments came from the firm’s manager or president. Each party indicated that the other determined the methods by which the assignments were performed. Both parties agreed that the firm would be contacted if any issues arose. The worker submitted aging reports. She worked scheduled hours, Monday through Friday, for forty hours per week. The firm noted that the worker decided on when and how to perform the services. Both parties agreed that the worker worked at the firm’s premises and that there were no meetings. The firm indicated that the worker was to provide the services personally and the worker indicated that only the firm would hire and pay any substitute workers.

The firm provided the computer, supplies, equipment, files, as well as the workplace and workspace. The worker was paid an hourly rate. The firm indicated a contract amount; however, there was no written agreement according to both parties. Both did agree that the worker had no other economic risk. Both agreed that the customer paid the firm. The worker noted that she established the level of payment for services; the firm indicated that the worker did not.

There were no benefits though the worker listed benefits applicable after the probationary period. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm disagreed. The relationship ended when the worker noted that she quit; the firm noted that the job ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker with instructions and her assigned duties. She performed her services Monday through Friday for approximately forty hours each week. The firm indicated, however, that the worker had no scheduled hours. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control; however, 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 term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

The firm indicated that the worker was to provide the services personally; understandable if the worker was skilled in this line of work. 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.

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. The worker simply received an hourly rate of pay and had no other economic risk. 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. Though the firm indicated that the worker was paid per contract amount, there was no written agreement or contract. There were, however, emails between the parties indicating an hourly rate of pay during a probationary period.

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. There were no benefits and there was no written agreement. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the firm's support operations. She did not maintain an office, hold herself out to the public or advertise. She responded to a job offer. 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.

While the firm indicated that the position was temporary, information provided indicating that a probationary period of work was involved, did not support this premise. In addition, there is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods if the right to direct and control the worker exists.

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.