

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF.34 OfficeWorker

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

Facts of Case

The firm is in business to sell life insurance and fixed/indexed annuities. The firm engaged the worker to perform services as an office assistant. The firm issued to the worker Forms 1099-MISC at year-end to report the monies received for services performed as non-employee compensation.

The services were routine office work, and the firm provided instructions on how to complete the work. Work methods were determined by both the firm and worker. Problems and complaints were reported to the firm for resolution purposes. The worker was required to perform his services personally at the firm's location, during the firm's business hours.

The firm provided the office space, office supplies and equipment needed to perform the services. The worker did not provide anything needed to perform the services. The worker incurred transportation expenses to and from the firm's office location. The firm paid the worker a set daily amount for his services. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services he performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to the public, while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes.