

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.38 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 business to purchase flutes, adjust, and clean them before selling to retailers. The worker was engaged to perform services as an office assistant, and to assist with getting the flutes ready for sale. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker received training on the firm's accounting system. All work assignments came from the firm. The firm determined the work methods by which to perform the services. Problems and complaints were reported to the firm for resolution purposes. The firm required the worker to perform services personally, at its location, during its business hours.

The firm provided the facilities, and all equipment, tools, and supplies needed to perform the services. The worker did not incur work related expenses. The firm paid the worker on an hourly wage basis for her services. Customers paid the firm for services rendered. The worker did not incur economic loss or financial risk with regard to the services she 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, and did not advertise her 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, training, work methods, schedule, and routine in the performance of her 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 her 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 her 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 she performed her 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.

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