

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.39 Administrative Assist	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 sole proprietor operating an art gallery. The worker was engaged by the firm as a gallery assistant. There was no written agreement between the two parties.

The worker stated he received his assignments from the firm. The firm reviewed the assignments performed by the worker. The worker relied upon the firm to resolve problems and complaints. The worker was required to perform the services personally. to submit timesheets. The worker's schedule was 9 a.m. to 5 p.m. three days a week. The worker performed her services at the firm's location. The worker was required to perform the services personally.

The firm provided the location, computer, office equipment and materials the worker needed to perform his services. The worker was reimbursed fuel expense when running errands for the firm. The worker was paid on an hourly basis. The customers paid the firm directly. The firm set the hourly rate for the worker to be paid.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker was represented as an assistant. The worker terminated her services.

The worker provided a copy of an e-mail with the firm where the firm officially offered the worker the position as a Gallery Assistant.

The worker provided several time sheets the worker filled out for payment of his 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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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 servi

Analysis

The worker was an employee according to common law. The information provided by both parties showed the worker received his assignments from the firm and the firm reviewed the worker's assignment to make sure it met the firm's standards. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. Requiring the worker to fill out timesheets showed control over the worker's services. The firm had the financial investment since the firm provided the location, office equipment and supplies for the worker to perform his services. Financial control was shown by the firm setting the worker's hourly rate of pay. The worker performed services as the gallery assistant for the firm's gallery which demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989