

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.47 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 in the business of child welfare advocacy and leadership. The worker was engaged by the firm to coordinate youth travel for statewide policy meetings; reconcile monthly expenses associated with statewide policy meetings; coordinate logistics for state wide policy meetings; attend statewide policy meetings as needed; and provide a monthly report of activities. The firm reported the worker's remuneration on Forms 1099-MISC for 2012, 2013, and 2014.

The agreement between the parties states that the worker will provide services set forth in the "Scope of Work", and failure to provide all services will result in termination of the agreement; payment will be made on a monthly basis for up to 10 hours per week at the stated hourly rate; the worker will provide the firm with an invoice, including a report documenting progress made; the firm's executive director will approve all invoices and reports; the worker will maintain accurate records on all interactions with the firm's staff and work completed, including time logs, and personal and financial records to provide the firm with an accurate record of all activities under the agreement; the firm reserves the right to terminate the contract if the worker's work is substandard and/or the scope of work is not executed in a timely manner; the firm and the funding agency may examine and audit the worker's financial and other books, documentation, and materials relating to the agreement for up to three years after final payment; and the worker agrees that she is not an employee of the firm or the funding agency.

Information from the parties supports that the firm provided the worker with her work assignments and the methods by which to provide them. If problems or complaints occurred, the worker contacted the firm for resolution. The worker worked within the firm's normal office hours. She provided her services on the firm's premises.

The firm provided the office space and equipment. The worker did not incur expenses in the performance of her services. The firm paid the worker at an hourly rate. It covered her under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The worker did not advertise her services or provide similar services for others during the same time period.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, the firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties. If a firm has to make a worker "understand" or even if a worker "agreed to" being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker's status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform her services, the firm still retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker provided her services during the firm's normal business hours. She provided her services on the firm's premises. 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. The worker was required to submit monthly reports of her hours and activities. 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. There is no indication that the worker could engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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 firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services under the firm's name. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's child welfare advocacy and leadership mission. 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 business. These facts show that the firm retained control over the work relationship and services of the worker.

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.