

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.48 AdministrativeAssist	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 renting apartments and engaged the worker as an administrative assistant from May 2013 until April 2014.

The worker received instructions from the firm on clerical and collection practices and training on the security areas. The worker stated he obtained his assignments from the firm verbally. The firm stated he received his assignments according to the contract. The worker indicated the method by which he was to perform his services was determined by the firm, administrator, and board of directors. Whereas the firm said it was governed by the contract. Both parties declared if there were any problems or complaints with the worker's service, they were elevated and resolved by the firm. The worker was required to complete reports on particular situations in the security area. According to the contract and the worker, his schedule was Monday, Tuesday and Friday, from 8:00 AM until 12:00 PM and 1:00 PM until 5 PM; as well as Saturday and Sunday from 12:00 PM and 8:00 PM. There were personnel meetings, the worker was paid to attend. The worker performed his services at the firm's location and was required to perform his services personally.

The firm provided the worker with all the necessary materials, supplies, and equipment he needed to perform his job duties, such as a computer, telephone, pens, etc. The worker did not lease any equipment nor incur any expenses in the performance of his services to the firm. The worker was compensated on an hourly basis; per the contract the worker was paid \$7.75 an hour. The firm establishes the level of the payments and the customers pay the firm.

There was a written contract describing the terms and conditions of the relationship. Both parties indicated the worker did not perform the same or similar services for others and there was no information submitted or discovered indicating the worker provided his services for others. The worker did not advertise, and did not maintain a business listing or a business office. The worker performed his services in the firm's name. Either party could terminate the relationship at any time without incurring a liability; in fact, the relationship has ended.

Analysis

After analysis of the common law factors as they related to this case, we find that the firm exercised sufficient control over the worker to establish the existence of an employer-employee relationship.

There was a written contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties.

The firm maintained the right to direct and control the worker, which is an indication of behavioral control. 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. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker not only received training but was also required to attend meetings. Also, the establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.

The firm determined the rate charged the customers, and paid the worker an hourly wage, which is an indication of financial control. Payment by the hour, week, or month generally points to an employer-employee relationship. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. The 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.

There was no business risk for the worker. A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. Either party could terminate the relationship at any time; indicating the relationship of the parties was employer-employee.

Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.