

SS-8 Determination—Determination for Public Inspection

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| Occupation 02OFF.76 Office Worker | 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 payer is in the business of publishing and distributing books, maps, and playing cards under the business name, [REDACTED]. As the owner of the business, you engaged the worker as a shipping clerk. You provided the worker with Forms 1099-MISC to report her remuneration for 2013 and 2014.

Information from the parties supports that you trained the worker. You provide with her with her work assignments. She determines the methods by which she performs her services according to your training and expectations. If problems or complaints occur, the worker contacts you for resolution. The worker's schedule is flexible and is dependent upon the needs of your business. She performs her services on your premises. The worker is required to perform her services personally.

You provide the supplies, equipment, materials, and the property. The worker does not incur expenses in the performance of her services. You pay the worker at an hourly rate and reimburse her for any out-of-pocket expenses. You do not cover her under workers' compensation. Neither party indicated an investment by the worker in your business or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker does not advertise her services or provide similar services for others.

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, your statement that the worker is 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you trained the worker. You retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for you 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 you retain behavioral control over the services of the worker.

Factors that illustrate whether there is 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, does 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. You pay the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retain control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker performs her services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker performs her services under your business name. She is not engaged in an independent enterprise, but rather the shipping services performed by the worker are a necessary and integral part of your business. 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. Although you do not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.