

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.77 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

Information provided indicates the firm is a medical device distribution business. The firm indicated [REDACTED] was engaged as a 1099 independent contractor and both parties understood the arrangement for tax years 2013 and 2014. The agreement was oral between both parties. [REDACTED] let [REDACTED] use a workspace in their office and she also worked from her home. She used her own computer when at home and was provided a computer while in the office. Her major assignment for [REDACTED] was bookkeeping and she worked directly with an outside accounting firm. The firm stated no training or instructions were provided by the firm. She worked directly with an outside accounting firm. She provided general accounting quick book reports. The firm stated she came and left on her own schedule and determined if she worked at home or at the office. She was not required to attend meetings. The firm provided office space, a computer and [REDACTED]. She was paid by the hour as agreed upon. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform services for others, their permission was not required. The firm stated the worker had been terminated for wrongful use of financial information.

The worker indicated her title was executive coordinator. Her duties were administrative, phone reception, filing, bill payments, invoicing, bookkeeping etc. She indicated she was given daily tasks verbally from the President of the firm. She indicated she provided expense breakdown reports. The worker indicated she performed services Monday through Friday from ten am to five pm. She indicated all services were performed on the firm premises, utilizing the firm's equipment and supplies. She agreed she was paid by the hour and the customer paid the firm. She indicated she was represented as an employee. She agreed the firm terminated the work relationship.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law."

Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. Research performed on this firm via [REDACTED] shows the firm did in fact list the worker on their website under "meet the team" first as their administrative assistant in early 2013 and later listed (June 2013) as their Executive Coordinator. The worker was paid by the hour and utilized the firm's office space and equipment indicating no opportunity for profit or loss. The use of a personal computer would not be deemed a significant financial business investment.