

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.79 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 firm is a used car dealership. The firm engaged the worker to perform bookkeeping and paperwork services for the firm's business operation. The worker had experience so the firm did not provide the worker with any formal training. The firm provided the worker with sales and disbursements information to record. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm's outside accountant regarding any problems or complaints for resolution per the firm, the worker indicated contacting the firm regarding problems or complaints for resolution. The firm required the worker to provide the firm with completed paperwork and bookkeeping reports. The worker's hours varied based on business activities and work needed to be performed. The worker performed the services at the firm's business location and from home. The firm did not require the worker to perform the services personally. No substitutes or helpers were hired or paid by either party per the firm. The worker stated the firm hired and paid substitutes or helpers if needed.

The firm provided a computer, materials, and supplies needed by the worker to perform the services. The firm was not sure what worker provided or what expenses the worker incurred. The worker stated she provided nothing and did not incur any expenses. The firm did not reimburse any expenses. The firm paid the worker a salary of [REDACTED] per day. The customers paid the firm. The firm determined the level of payment for the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm did not know if the worker performed similar services for others or advertised as a business. The worker indicated no similar services were performed for others while performing services for the firm and she did no advertising as a business to the public. The firm referred to the worker as a bookkeeper per the firm. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case you engaged the worker who had prior experience to perform bookkeeping and paperwork services for your business operation. You provided the worker with the necessary information to perform the services and allowed the worker flexibility in when and where to perform the services based on your business needs. You and the worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. You required the worker to provide you with completed paperwork and bookkeeping records. The worker contacted you or your designated accountant regarding any problems or complaints for resolution. The worker performed the services personally mostly from your place of business and sometimes from home depending on your volume of business activity and workloads. These facts evidence behavioral control by you over the services performed by the worker.

You provided the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. You paid the worker a salary per day and your customers paid you. You determined the level of payment for the services. The worker could not suffer any economic loss due to significant on-going business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for your business operation. These facts evidence financial control by you over the services performed by the worker.

There were no contracts between you and the worker. The worker did not perform similar services for others while performing services for your business operation. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for your business on a regular and continuous basis over several years, mostly from your place of business under your business name. You referred to the worker as a bookkeeper to your customers. Both you and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.