

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.84 Receptionist	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 pharmaceutical company. The worker was engaged to provide services as a temporary receptionist and to scan documents as well. She received a 2013 and 2014 1099-MISC for her services. There was a written agreement.

The firm indicated that no training was given, only general instructions; however, the worker noted that the firm had Standard Operating Procedures to follow along with mandatory on-site training given by the firm’s quality assurance manager. An email from the firm was provided indicating that the worker was to report for training. The firm also provided the worker with her work assignments via department head communication through meetings, by emails and verbally. Each party indicated that the other determined the methods by which the assignments were performed but were in agreement that the firm would be contacted if any problems arose. Only the worker mentioned that she was required to report her hours for manager approval as well as a summary of all the work performed that day. The firm noted that she made her own schedule within the operating hours of the firm. The worker noted that her routine consisted of signing the attendance sheet, answering phones, working on updates to the archive list, ordering firm supplies, calculating staff hours, etc. Her hours had some flexibility but were not to exceed a 8.5 hours per day. Both parties agreed that all work was done at the firm’s location. Only the worker noted that there were weekly update meetings. Both parties also agreed that the worker was to provide the services personally with only the worker mentioning that the firm alone would hire and pay any substitute workers.

Both the firm and the worker indicated that the firm provided the facility, desk, computer, phone, company email and office supplies. Both also agreed that the worker was paid an hourly rate. Each party indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability; however the worker mentioned that she would have to pay back the training if she left prior to six months. The worker did not perform similar services for others. She indicated that she was represented as an employee. The relationship ended when the worker’s services were no longer needed.

Brief summary:

There was an Independent Contractor Services Agreement which indicated that the worker provided consulting services as a receptionist and document scanner as well as any other duties as assigned. The agreement would automatically renew every six months; compensation was listed at a pay rate of \$■■■■ per hour. There was a confidentiality clause and a non-solicitation clause for 24 months after termination.

There was also a separate Confidentiality Agreement signed and dated.

In addition, there was a Contractors General Terms of Service that included the following issues: paid twice a month; responsible for own tools; attendance; dress code; no smoking in building, no use of drugs, alcohol; no solicitation; English only; submission of time sheets, project sheets and expense reports

The Code of Ethics and Business Conduct, which included consultants, dealt with conflicts of interest, accurate record keeping, obeying law, and using firm assets to name a few subject matters covered.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided initial training to the worker along with instructions and her assigned duties. 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. She performed her services according to the firm's scheduled work hours and days at the firm's location. 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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

The firm indicated that the worker was hired on a temporary basis even though her services were provided for over a year. However, she provided her services on a continuous basis throughout the time period involved. 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.

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. The worker simply received an hourly rate of pay and had no other economic risk. The firm provided the workplace, the workspace, along with the furnishings, equipment and office supplies needed by the worker. In addition, payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

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. There were no benefits. There was a written agreement which referred to the worker as a consultant; however, the firm's belief 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.

The worker was a receptionist and document scanner at the firm's place of business. Though the firm had indicated that the relationship was temporary, there is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods. She was not engaged in an independent enterprise as a receptionist and document processor, but rather the services performed by the worker were part of the necessary activities supporting the firm's operations. 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.

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.