

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.87 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 indicated the firm is a financial advisory sales and marketing business. The worker had been retained by the firm in 2013 and 2014 as their client services/investment administrator. The firm reported the income on Form 1099-MISC for both tax years.

The firm indicated the worker performed services as an investment and Advisory Service support and project management of routine periodic tasks. He also performed quarterly reporting for personal investments, and quarterly reporting for 401K plans. The firm stated the worker agreed to the independent contract status and they had continuous open dialogues about the same. The firm stated he was given web based training, hands on training by expert team members, open offer to sponsor for obtaining professional licenses. Work assignments were project based on organizational workflow requirements and demands. The firm owner stated he delegated work assignments himself. The firm business owner resolved any issues and determined how the work assignments were performed. The worker was to provide documentation of processes supporting reporting projects. The firm stated the agreement was budgeted for a forty hour work week. The worker normally arrived around eight-thirty or nine and left around four-thirty or five. He stated services were performed at the firm's office. The worker was encouraged to attend weekly pipeline meetings and project based meetings. He was to perform his services personally. The firm hired and paid all individuals. The firm stated they provided the remote access, workstation at location and land line phone. Expenses for travel or related licensing are reimbursed via proof of attendance or passing grade. The worker was paid \$ [REDACTED] annually. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated they did not provide business cards, (the worker provided a copy of his company business card). The worker was presented as investment and advisory services administrative support. He was terminated.

The worker agreed he was provided with hands-on instruction from the manager, they had daily meetings where instructions were given, workflow management was described in detail and he viewed software educational tutorials. He agreed work assignments were given from the portfolio manager as well as all other registered securities representatives. The portfolio manager and the owner determined how the work was performed and responsible for resolution of all issues. Various reports were necessary. He stated his hours were strictly nine to five, overtime was not offered although it was encouraged. Services were performed at the firm's business location, some research was completed at his home. He was required to perform his services personally. He indicated he was paid by the hour and agreed the customers paid the firm. The firm provided equipment, and software. He stated he was given a business card, copy was provided. He was represented as their investment administrator/client services rep. He agreed he was terminated.

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. This is evidenced by the fact the worker was hired at an entry level position. The firm stated they provided web based training and hands on training. The worker performed services on a full time continuing basis. The firm controlled all work assignments, and was responsible for resolving all issues. The worker was required to submit various reports on the projects worked. The worker did in fact provide a company business card with the company logo that represented him as client service - investment administrator, with his company e-mail address and phone number.

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 services were performed on the firm premises, utilizing the firm's equipment and supplies. He was guaranteed a set salary of forty-five thousand, which was paid out on a weekly basis. The firm stated they reimbursed for any travel expenses after receipts were turned in.

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.