

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.119 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

Information provided indicated the firm is a non-profit mental health service business. The firm indicated the worker had been retained to perform contract billing for one school year and outreach for new referrals. The firm stated the worker was not part of an office team. The worker's mother gave the worker billing to do at home. As an outreach worker she was given a short script and did on her own. The firm stated work assignments came from the CEO. The CEO made certain to tell the worker she wanted her on outreach almost 100% of the time, after the contractual billing work had expired. The worker was to provide referral logs and billing reports. The firm stated the worker was supposed to have contacted her, but constantly, against her wishes, contacted the worker's mother (who also worked at the firm) instead. The firm stated the worker set her own hours as she would not be in the office when no one was there, so she came in when someone else was. She worked at the office and from her home. Services were to be performed personally. Staff meetings were held every few months. The firm indicated they provided the equipment and supplies. The worker used her space at home/computer. The worker incurred gas expenses delivering the [REDACTED] to the office; her mother drove her, as she did not drive herself. She was paid by the hour. The firm did carry workmen's compensation. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated she was free to work elsewhere, but verbally was asked not to befriend family of competitive agency in close proximity. All work was performed under the firm's business name. She was let go as she continued to befriend the daughter of the firm's competitor.

The worker indicated she had been performing the same services as another employee of the firm. She was given on the job instruction. The work assignments came from her supervisor. The executive director determined how the work was performed. She was required to report to the executive director if there were any issues. The worker indicated she worked twenty five hours per week. Services were performed on firm premises. She did attend periodic staff meetings. The firm hired and paid all personnel. The worker indicated the firm provided the equipment and supplies. She agreed she was paid by the hour. She indicated she was laid off.

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.

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.

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

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee

Analysis

cont.

relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. See Rev. Rul. 71-524, 1971-2 C.B. 346.

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. In order for a person to be an independent contractor, they must first and foremost own, operate, maintain, a business. The worker in question, was the daughter of another employee of the firm. She lived at home, and did not own a business. The firm provided training, instructions, and work assignments. The firm provided the equipment, and space in which to perform those services. The fact the worker may have performed some services at home utilizing a laptop and a desk does not constitute a significant business or financial investment. All services were performed under the firm's business name, as instructed and directed by the firm.