

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.183 AdministrativeAssist	Determination: <input 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 an independent hotel sourcing organization, operating under a license agreement with [REDACTED]. [REDACTED] owner of the firm responded to our request for information. She indicated [REDACTED] is not a large firm, but a single owner individual operating with no full or part time employees. However, her filing documents indicated the firm is in fact a partnership filing 1065 partnership returns. The worker had been retained by the firm to provide accounting and administrative on an as needed basis.

The firm stated there was no formal agreement. She was not given any extensive instructions on how work was to be done. Work assignments were via e-mail or phone calls outlining the projects. She determined how the work was performed. If she was unable to complete a task the firm took it back. She could hire her own staff, and in fact her husband did in fact assist her. No reports were required. No scheduled hours were "required", she provided any she generated. She worked for other firm's such as [REDACTED]. She managed her own schedule. The worker had a home office with her husband. No work was done at [REDACTED] or any customer office. There were no required meetings. She hired her own support (including her husband.) The firm provided no equipment, materials or business cards. She provided her own computer, home office etc. She was paid by the hour. No benefits provided. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as a contracted assistant for certain ad hoc projects for [REDACTED] relating to it's independent hotels sourcing business operated as a licensee of [REDACTED]. The worker ended the work relationship because she wanted a full time job with benefits.

The worker indicated she had been provided training on all aspects of the job duties. Work assignments came directly from the employer via e-mail and phone. [REDACTED], employer was responsible for resolving all issues. She submitted commission reports and timesheets. She stated she would check e-mails during normal business hours for assignments. She agreed work was performed from her home. She indicated services were to be performed personally. She did not hire anyone. She provided her own laptop. She indicated she was paid by the hour, the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She agreed she did perform similar services for others. Approval was required by the firm. She indicated [REDACTED], was partner with [REDACTED]. She stated she was represented as an employee.

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 [REDACTED]. 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.

Under the circumstances existing in the instant case, the firm did not exercise, or have the right to exercise, the degree of direction and control necessary to establish an employer-employee relationship under the usual common law rules for Federal employment tax purposes.

Internal Revenue Code (IRC) section 3121(d)(3)(A)(B)(C)(D) provides, in part, that workers in certain occupational groups who are not employees under the common law, are considered employees for FICA purposes if they received remuneration under certain circumstances. These categories, referred to as statutory employees, are:

Analysis

1. Agent-drivers or commission-drivers;
2. Full-time life insurance salespersons;
3. Home workers;
4. Traveling or city salespersons.

Workers in these four occupational groups are employees for FICA tax purposes if they meet all of the following requirements, but do not meet the common law test:

1. The contract for service contemplates that the worker will personally perform substantially all the work;
2. The worker has no substantial investment in facilities; and,
3. There is a continuing work relationship with the person for whom the services are performed.

The home worker category of statutory employee includes people who make buttons, quilts, gloves, bedspreads, clothing, needlecraft products, etc, as well as typists and transcribers or the like. The work is done away from the employer's place of business, usually in the worker's own home, the home of another, or a home workshop.

To qualify as a statutory employee, the home worker must meet, in addition to all three of the general requirements of a statutory employee, all of the following requirements:

1. The work must be done in accordance with specifications given by the employer. Generally, these specifications are simple and consist of patterns, samples, etc.;
2. The material or goods on which the work is done must be furnished by the employer; and,
3. The finished product must be returned to the employer or other designated person. It is immaterial whether the employer calls for the work or the worker delivers it.

CONCLUSION

We have applied the law as cited above to the information submitted. The worker in this case meets the criteria for statutory employee as a home worker. Compensation to an individual classified as a statutory employee performing services as a home worker is subject to Federal Insurance Contributions Act (FICA) tax withholding as provided by IRC sections 3101 and 3111, if paid \$100.00 or more in cash during the calendar year from one employer. Remuneration paid to a statutory home worker is exempt from the Federal Unemployment Tax Act (FUTA) tax, is not subject to federal income tax withholding on wages, and is not eligible for voluntary federal income tax withholding. For further information on home workers, see IRS Publication 15, Circular E, Employer's Tax Guide and Publication 15-A, Employer's Supplemental Tax Guide.