

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.202 AdministrativeAssist	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 real estate sales business. The firm engaged the worker as an administrative assistant and paid the worker on a W-2 as an employee. The firm also engaged the worker to perform computer management and marketing services for the firm's real estate agents and paid the worker on commissions and issued a Form 1099-MISC for these services. The firm provided the worker with training on the firm's computer platform used to manage sales leads. The firm's designated team leader assigned the worker services to perform and determined the methods used to perform the services. The firm required the worker to contact the team leader regarding any problems or complaints for resolution. The worker provided the firm with reports on agents contacts, results, and other information via the computer platform. The firm determined the worker's work schedule and the worker performed the services from the firm's real estate office mostly and some from worker's home office. The worker attended sales meetings. The firm required the worker to perform the services personally. The firm's team leader hired substitutes or helpers and the firm paid them per the worker. The firm indicated not applicable to hiring substitutes or helpers and the worker paid them and was not reimbursed by the firm for the payment.

The firm provided the office computer and phone. The worker provided home computer and cell phone when working from home. The worker did not lease equipment or space. The firm and worker disagreed on who provided [REDACTED], continuing education fees, and license renewal fees. The firm paid the worker commissions on sales and the customers paid the firm. The firm allowed the worker draws against commissions earned as requested. The firm carried workers' compensation insurance. The worker did not determine the level of payment for the services or products sold. The firm's brokers determined this issue per the firm. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker during the years 2009 through 2013. There was a signed contract provided between another d/b/a and worker in 2014 as a real estate sales associate. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm and worker 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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. In this case the firm provided the worker with the necessary training and instructions needed to perform the jobs. The firm's team leader assigned the worker services to perform and determined the methods used by the worker 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. The firm required the worker to contact the team leader regarding any problems or complaints for resolution. The worker provided the firm with internet based lead reports. The worker performed the services on a flexible variable schedule at the firm's place of business mostly and from home. The worker attended sales meetings. The firm required the worker to perform the services personally. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided office equipment and materials and the worker provided personal equipment when working from home. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker hourly and on a commission basis depending on the type of services performed. The customers paid the firm. The firm carried workers' compensation insurance. The worker did not determine 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 profits made nor the risk of losses being incurred with regard to performance of the services. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss.

There were no contracts provided between the firm and the worker. The firm provided the worker with paid benefits for administrative assistant service duties. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.