

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.207 OfficeWorker	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 in the business of providing therapy and counseling services, and self-help specialty classes. The worker was engaged by the firm to perform special projects including: Producing and editing videos for the firm; drafting and editing firm marketing material providing community outreach in conjunction with marketing services; drafting firm policies and procedures, and performing other duties as assigned. The firm reported the worker's remuneration on Forms 1099-MISC for 2013 and 2014.

Information from the parties supports that the firm provided the worker with her work assignments. Both parties determined the methods by which she performed her services. The worker did not keep a regular schedule; time and hours varied depending on the project the worker was retained to complete. She generally performed her services on the firm's premises, but performed marketing services at other locations. The firm stated that the worker was not required to perform her services personally. If the worker would have hired any additional helpers, she would have had to obtain approval by the firm.

The firm provided the office equipment and supplies, and the property. The worker used her personal computer, telephone, and vehicle. The firm paid the worker at an hourly rate. It did not cover her under workers' compensation. Customers paid the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business. Other than the risk of loss or damage to equipment, the worker did not risk incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker stated that she did not provide similar services for others during the same time period. There is no evidence presented that the worker advertised her services or maintained a business listing.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm trained the worker. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. 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. While the firm provided the worker with some freedom of action as to when she performed her services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needs to be analyzed to determine the worker's correct employment tax status. The worker generally performed her services on the firm's premises, and any business conducted off premises was for the benefit of the firm. The firm stated that the worker could have engaged and paid others to perform services for the firm on her behalf; there is no evidence that she did so. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker utilized her personal computer, phone, and vehicle, but this does not constitute a significant investment. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were 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 the firm's business. 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. Although the firm did not provide benefits to the worker, the work relationship terminated with neither party incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.