

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.208 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 a corporation in the business to sell home and auto insurance to the clients. The worker was engaged by the firm as an insurance salesperson. There was no written agreement between the two parties but the firm contends there was a verbal agreement.

The worker received no training from the firm. The worker received assignments from people contacting the firm. The worker stated the firm determined how the assignments should be performed but the firm stated the worker determined how the assignments should be performed. The worker stated she relied upon the firm to resolve her problems and complaints and the firm stated the worker relied upon herself. The worker was required to submit sales logs to the firm. The worker set her own weekly schedule. The worker performed the majority of her services at the firm's location. The worker was required to perform her services personally.

The firm provided the worker with an office, office equipment and supplies the worker needed to perform her services. The worker did not lease any space to perform the services. The firm stated the worker only provided her time, labor and energy. The worker was paid both hourly and on a commission basis. The worker could not suffer a significant loss in the performance of her duties. The customers paid the insurance company. The level of payment was not established by the worker.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time she performed services for the firm. The worker was represented as an insurance agent. The worker terminated her services.

Analysis

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.

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.

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 performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The worker was an employee according to common law. The information provided by both parties showed the worker did not receive training as the worker was already trained in how to perform her services from the previous owners of the firm. Control was shown when the firm required the worker to progress reports in the forms of preparing sale logs. The fact the worker was required to perform her services at the firm's location and to provide her services personally showed the firm was interested in the methods the worker used to perform her services as well as being interested in the end result as an employer. The firm had the financial investment as the firm provided the worker with an office, office equipment and supplies for the worker to perform her services. There was no evidence showing the worker had a business presence in performing a similar services and the worker could not suffer a significant loss while performing her services which demonstrated a lack of investment in the worker operating her own business. The fact the worker performed her services under the firm's business name demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341
Worker: Notice 989