

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.219 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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is in the business of real estate sales and leasing and the worker was engaged from 2012 to 2015 to help the firm's office when he was available to work. The worker's duties included creating marketing fliers, entering property information onto websites, putting up and painting real estate signs, and running errands. The firm believes the worker was an independent contractor because he set his own schedule, he had another job working in the library at the university he attended, and they gave him extra work when he had time while in school.

The firm states the worker was not given training or instructions to speak of other than he was occasionally assisted with projects. The worker arrived at the firm's office and they would discuss with him what tasks needed to be done. The firm states they would also email or text requests to run errands when he was available. The firm states the worker determined how he performed his services. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit written reports but was required to notify them of the completion of what was requested of him. The worker was not required to attend meetings. The firm states the worker spent approximately 75% of his time at their office.

The firm provided a printer, copier, and paper to the worker in order to perform his services. The worker provided a laptop computer and his vehicle. The worker incurred fuel expenses for his vehicle and the firm reimbursed the worker for this expense. The firm paid the worker at an hourly rate and the worker did not have an opportunity to incur a loss as a result of his services. The firm states they established the level of payment for the services provided. The firm reported the worker's earnings on Forms 1099-MISC.

The worker was eligible for bonuses. The worker did not have an investment in a business related to services performed and he did not advertise his services. Either party could terminate the work relationship at any time without either party incurring a liability. The firm terminated the work relationship with the worker.

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.

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, the firm assisted the worker with projects that the worker was unfamiliar with. The firm provided the worker with his assignments when he reported to work. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with some freedom of action as to when he performed his services due to his school schedule, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. It is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting oneself and be an employee of one or all of whom engages him.

In this investigation, we looked at whether the worker displayed characteristics of an independent contractor; such as the outpouring of money into a business offering those services to the public and the opportunity to incur a loss or realize a profit as a result of his services. The worker in this case did not have this. The worker did not have a business license or business registration in the state which he performed services.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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.