

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.229 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 an internet sales marketing business selling services and products for firm customers. The firm engaged the worker through an application process to perform office work and sales marketing services for the firm's business operation. The firm provided on-the-job training as needed and requested to the worker. The firm assigned the worker services to perform and determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm did not require the worker to submit any reports but the worker did create reports to use in operation of the firm's business. The firm allowed the worker to perform services on a variable flexible schedule basis. The worker performed services mostly at the firm's place of business and sometimes from home. The firm did not require the worker to attend any meetings. The firm required the worker to perform the services personally per the worker and the firm hired and paid substitutes or helpers if needed. The worker indicated they did not require the worker to perform the services personally and the firm owners would provide the substitute or helper services if needed.

The firm provided the worker with a key to the firm's office, office equipment, materials, and supplies. The worker did not lease equipment or incur any business expenses. The firm reimbursed business expenses if the worker incurred any. The firm paid the worker a monthly salary and commissions on sales made through the worker's created marketing sources. The firm's customers paid the firm. The firm did not carry workers' compensation insurance. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm provided paid holiday and bonus benefits. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business but advertised the firm's business with created marketing materials. Both the firm and the 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. In this case the firm engaged the worker through an application process to perform office work at the firm's place of business. The firm provided any necessary training or instructions on the job when requested by the worker. The firm assigned the worker services to perform and allowed the worker some flexibility in when and where services were performed. The firm and worker 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 firm regarding any problems or complaints for resolution. The worker personally performed services mostly from the firm's office and sometimes from home. The firm provided substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided the office, equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm reimbursed all business expenses. The firm paid the worker a monthly salary plus commissions and the firm's customers paid the firm. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. 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 profit or loss.

There were no contracts between the firm and the worker. 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 worker personally performed services for the firm's business mostly from the firm's place of business on a regular flexible schedule basis under the firm's business name over a period of several months. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.