

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.233 Administrative Assist	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 worker initiated the request for a determination of her work status as a property manager and personal assistant to the firm in tax years 2014 and 2015. The firm's business is described as commercial rental property.

The firm's response was signed by [REDACTED], president. The firm's business is described as commercial rental property. The worker performed services as a property management assistant.

According to the firm, there was no training provided to the worker; she was given instructions as to the expected end-result. The worker determined the methods to be used to perform her job tasks; however, she was to contact the firm if she encountered any problems or complaints that required resolution. The worker provided verbal reports. The services were rendered at the firm's rental property. The worker was required to render the services personally.

The worker indicated she was given specific training and instructions and was supervised as to the execution of tasks. The job assignments were conveyed via email, text, or verbally by the firm. She stated the firm determined the methods by which her services were performed. The worker concurred that any problems or complaints were directed to the firm and that she was required to perform the services personally.

The firm responded that the worker was not provided with any equipment or supplies nor did she provide anything. The customers paid the firm; the firm paid the worker a monthly management fee. The firm indicated the worker established the level of payment for services rendered or products sold.

The worker stated she was provided with a laptop, cell phone, and general office supplies. She furnished nothing, she did not lease equipment, space or facilities, and did not incur expenses in the performance of the job. She concurred that the customers paid the firm; but, indicated she was paid a salary. She responded that she was not at risk for a financial loss in this work relationship. The firm established the level of payment for services provided or products sold.

The firm responded that no benefits were extended to the worker. The worker stated she was entitled to benefits of paid vacations, sick pay, and paid holidays. Both parties concurred that either party could terminate the work relationship without incurring a liability or penalty and the worker was not performing same or similar services for others during the same time frame. The firm indicated the worker was referred to as the assistant manager of property. The worker stated she was referred to as the property manager for the firm and a personal assistant to the firm's president.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 firm's statement that the worker was an independent contractor 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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

CONCLUSION

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.