

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.234 AdministrativeAssist	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 operating a soccer club and engaged the worker as a club administrator for club and general office-type duties. She received a 2014 and 2015 Form 1099-MISC for her services and has continued to provide services in 2016 as well. There was no written agreement.

The firm noted that the previous worker in that position trained the worker in this case. The worker received her work assignments from the firm's executive director, board of directors and coaches. The firm determined the methods by which the assignments were performed and would be contacted if any problems or issues arose. The worker submitted reports to the firm. Both parties agreed that the worker's hours varied dependent on the time of year and the needed duties. Both also agreed that the worker worked mostly from her own home as well as from the soccer complex. There were quarterly board meetings to attend. Both parties agreed that the worker was to provide the services personally with only the firm hiring others.

The firm provided the printer; the worker supplied the computer and office supplies. A state organization provided the card stock for players' cards. The worker was only reimbursed for post office box charges. Both parties agreed that she received a salary and had no other economic risk. The customer paid the firm. The firm established the level of payment for services/fees.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. Both agreed that she was a representative of the firm/club. The relationship has not ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

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 retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker with instructions, even if just initially. 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. The worker submitted reports to the firm as directed. 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. She received her task assignments from the firm and worked from her home. While work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. The fact that the firm required her to provide the service personally also supported an employer-employee relationship as the firm was interested in how the job was done since it was the worker who received training. In addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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. "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. The worker simply received a set salary and had no other economic risk other than loss of that compensation. 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.

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. There were no benefits and there was no written agreement. The worker provided administrative services for the firm's operations. She did not hold herself out to the public or advertise her services. When working for the firm, the worker was not engaged in an independent enterprise. Her services instead were part of the necessary activities of the firm. 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.

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 see Publication 4341 for guidance and instructions for firm compliance.