

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.236 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 a corporation in the business to assist real estate agents complete real estate transactions. The firm engaged the worker as a transaction coordinator. The worker was required to fill out an application for the position. There was no written agreement between the two parties.

The firm trained the worker how to perform her services. The worker received her assignments from the firm. The firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker had a regular schedule Monday through Friday. The worker stated she was required to submit weekly and monthly progress reports. The worker stated she was required to attend staff meetings and client meetings. The worker was required to perform the services personally.

The firm provided the location, office supplies and equipment. The worker provided her services. The worker did not incur any expenses while performing her services. The worker was paid hourly and on commission. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of her duties. The firm established the level of payment for the services provided.

The worker received vacation days and bonuses. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker stated she was represented as an employee performing services under the firm's business name and the firm stated the worker was represented as part of the firm's team. The worker terminated her services.

The worker provided copies of emails which showed the worker had an email address under the firm's business name. The worker's title was listed as the Licensed Transaction Coordinator. The email stated the worker was required to email the owner when she came in and when she left each day.

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.

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.

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.

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.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker was an employee according to common law. The information provided by both parties showed control by the firm when the firm gave the worker her assignments, determined how those assignments should be performed, and required the worker to perform the services personally. This showed the firm was interested in the methods used as well as being interested in the end result as an employer. The fact the worker was required to send the firm reports demonstrated control over the worker's services. The worker showed a dependency upon the firm as an employer to resolve the worker's problems and complaints. The firm had the financial investment as the firm provided the location, office equipment and supplies for the worker to perform her services. It was the firm that could suffer a significant loss due to lack of payment by the customers as the firm set the rate to charge the customers and then was responsible to collect the amount the firm charged. Giving the worker vacation days and bonuses indicated an employer-employee relationship existed. The fact the worker was considered part of the firm's team 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