

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.245 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 was in the business of providing psychotherapy services, counseling, and peer mentoring to disadvantaged populations. The worker was engaged to provide peer mentoring for the firm's clients as well as to provide services as an office manager, answering phones, scheduling, and processing paperwork. The worker received a 2010 Form 1099-MISC for his services; he had also worked in 2009 for the firm as well. The worker stated that in 2010, he provided services as both a mentor and as an office manager. In subsequent years, the worker received Form W-2s from another entity that merged with the firm for the same work relationship. This case will deal with the time period when the worker received Form 1099-MISC. There was no written agreement.

Both the firm and the worker agreed that the worker received his work assignments through the firm who determined the methods by which the assignments were performed and would be contacted if any problems or issues arose. The worker noted that he submitted time sheets and activity reports for his mentoring services. As the office manager, he worked scheduled hours; he opened the clinic doors, prepared the files for the therapists' daily schedule, signed-in clients to group, billed daily, and managed all schedules as well as made confirmation calls. The worker spoke to directors about the firm's services and to customers about the benefits of the firm's programs. The contracted agencies and the firm's owner gave the worker leads. The worker's work routine encompassed scheduling appointments for therapists and counselors made through lead contacts as well as creating files for all new clients. The firm noted that for peer mentoring, the worker scheduled his own hours and worked in the community. As office manager, he worked at the firm's premises. The worker noted that there were monthly staff meetings. He was to provide the services personally with only the firm hiring and paying any substitutes.

The firm noted that it provided office supplies; the worker noted that the firm provided a computer and desk. The worker incurred gas expenses for picking-up lunches for groups and community meetings. The firm indicated that the worker was paid a salary and an hourly rate; he had no other economic risk. The customer paid the firm. Both parties agreed that the firm carried worker's compensation insurance on the worker. Both also agreed that the firm established the level of payment for services.

Both the firm and the worker agreed that there were paid vacations and holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm did not know. The relationship ended when the firm changed locations.

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, whether for his position providing services as a mentor or providing office administration services. He worked set scheduled office hours even though his hours were flexible for mentoring services. He reported the hours and his activities that he worked as a mentor which were ultimately submitted to the firm. The firm was paid for the worker's mentoring services and in turn, paid the worker. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. So undoubtedly, there were different degrees of control by the firm over the worker depending on the service he was providing. A requirement that the worker submit regular or written reports to the person or persons for whom the services were performed indicated a degree of control. In addition, the worker provided his 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. He received a salary as well as an hourly rate of pay, dependent on the services provided; he was paid once a month for his mentoring services. 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.

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 some benefits but there was no written agreement. The firm's business activities included offering mentoring services to its clients. The worker provided those services as well as worked in the firm's office. The worker was not operating an independent business venture when working for the firm in either position. His services instead were part of the regular activities of the firm's business operations whether working in the office or out in the community. 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.