

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.249 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 county provides an early intervention program for preschoolers up to age three. The worker was engaged by the county as an assistant in various positions within the program. The county reported the worker's remuneration on Forms 1099-MISC for 1996 through 2006. In 2006, the county reclassified the worker to employee status and reported her remuneration on Forms W-2 for the remainder of 2006 and 2007.

Information from the parties supports that the county made training opportunities available to the worker. The worker's schedule was adjusted according to the county's needs. The worker performed her services on the county's premises. She was required to perform her services personally. If additional personnel were needed, the county was responsible for hiring and compensating them.

The county provided all office supplies and the property. The county paid the worker at an hourly rate. It did not cover her under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The county did not make benefits available to the worker. The worker stated that she did not advertise her services or provide similar services for others during the same time period. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the county provided training opportunities to the worker. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker followed the schedule set by the county. She performed her services on the county's business property. 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. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for the county on her behalf. 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. These facts show that the county retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. 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 county paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the county retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. 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. The worker performed her services under the county's name. She was not engaged in an independent enterprise, but rather the administrative and other services performed by the worker were a necessary and integral part of the county's mission of providing early childhood intervention services. 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. These facts show that the county retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the county 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.