

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.253 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 in the business of conducting operations in [REDACTED] involving agriculture, livestock, and biotechnology. The worker was engaged as a bookkeeper and accountant. She received a Form 1099-MISC for her services in 2011 through 2015; she continued to provide her services throughout 2016 and into 2017 as well. There was no written agreement.

Both the firm and the worker indicated that the firm did not provide training. The worker noted that her work assignments were given verbally and through emails. Only the worker indicated that the firm's former president as well as the current CEO (Chief Executive Officer) and CFO (Chief Financial Officer) determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. Both parties noted that there were no required reports. The firm indicated that the worker made her own schedule. However, the worker opened the office at a designated time, answered calls, handled mail, performed banking errands when asked, as well as other various tasks, staying until late in the afternoon. Both parties agreed that the worker worked at the firm's office. She also attended meetings when requested. Both parties agreed that the worker was to provide the services personally. Only the worker mentioned that the firm would hire/pay any substitutes or helpers.

Both the firm and the worker agreed that the firm provided the office, computer, phone, furnishings and supplies. The worker noted that she provided the quick books software; the firm included that she also supplied a notebook, car, cell phone and email. Only the worker mentioned that she was paid mileage when picking up executives at the airport as well as reimbursed for miscellaneous items purchased for the firm. The worker noted that she was paid a salary; the firm noted that she was paid 'piece work.' She had no other economic risk. Both agreed that the customer paid the firm. Each party indicated that the other established the level of payment for services.

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 though the firm disagreed. The relationship has 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. Though the worker required no training, she received her tasks and work assignments from the firm. She worked scheduled hours at the firm's premises although the firm noted she set her own schedule. However, she did open the office and performed any duties assigned by the firm whether office work, answering the phone, or running errands. While 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. The worker provided her services at the firm's office location. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. 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. The firm provided the office along with the necessary furnishings, equipment and supplies. The worker did not have any economic risk of operating an office. She was paid a salary. 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 no benefits and there was no written agreement. The worker was engaged as a bookkeeper and provided general office services as well. When doing so, the worker was not engaged in an independent enterprise. Her services instead were part of the necessary activities of the firm's office functions. 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.