

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.254 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 worker initiated the request for a determination of her work status as an office administrator, assisting in the day-to-day office tasks, manage accounts receivables, contact facilities regarding appointments, and scheduling logistics in tax year 2013. The firm's business is described as providing mobile modified barium swallow study for skilled nursing homes, rehab facilities, long-term care facilities, home-health and outpatient service centers. The worker indicated she completed an application in response to a [REDACTED] job posting.

The firm's response was signed by the manager. The firm's business is described as medical imaging. The worker's services were calling for collections, from her home or the office.

According to the firm, the worker was not provided any training or instructions and was not given work assignments. The worker determined the methods to use to perform her job. In the event the worker encountered a problem or complaint she was required to contact the manager. The worker had no schedule assigned by the firm and no reports were required of her. The worker worked from her home or the firm's office; she was not required to perform the services personally.

The worker indicated she was given minimal training and instructions regarding the job assignments from the firm. The firm determined the methods by which the worker's services were performed and any problems or complaints encountered by the worker were directed to the firm for resolution. The worker stated she did not have a key to the office; however, she was the only person in the office and therefore was not able to leave for lunch. Her services were generally rendered from 8:30 a.m. to 3:30 p.m.. The worker was not required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm's response to equipment, supplies and materials as provided by the parties was 'not applicable'. The worker did not lease space, equipment. The firm responded that the worker was paid piece work; it was clarified in a telephone conversation that she turned her time sheets into the office and was paid by bi-weekly. The customers paid the firm. The worker did not establish the level of payment for services provided or product sold.

The worker replied that the firm provided the computer, phone, printer, fax machine, and all office supplies. The worker furnished nothing; she did not lease equipment, space or a facilities, and did not incur expenses in the performance of the job. She responded that she was paid an hourly wage based on the time sheet she completed and submitted to the firm. The worker was not covered under the firm's workers' compensation insurance policy. The firm established the level of payment for services provided or products sold.

Both parties acknowledged there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm and worker concurred that she was performing same or similar services for others during the same time frame.

The worker provided a copy of the [REDACTED] ad for an office manager, a full-time position, with an hourly wage. In addition she provided a copy of a contract she submitted to outline the firm's expectations, as wells as copies of time sheets she was required to submit, and a copy of her resignation letter.

The firm could not locate the contract for services.

Analysis

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.

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. 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. However, 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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "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. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; 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. 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

CONCLUSION

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.