

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.262 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 is in the business of selling heat transfer machines and supplies plus graphic design services for garment applications. The worker was engaged as the order processor who received calls from clients as well as orders from salespeople. She received a 2013, 2014, and 2015 Form W-2 from the firm. In 2016, she received a Form 1099-MISC from the firm for substantially the same services. The firm indicated that its manufacturing was moved overseas and the worker performed her services for the overseas company. The firm also provided information indicating that the worker was paid back wages and included this amount on the 2016 Form 1099-MISC. There was no written agreement.

Initially, the firm provided training to the worker on how to enter orders and perform her duties. She received her work assignments verbally and in writing from the firm who determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. She reported on orders in processing, and orders in printing. Her daily routine consisted of checking the order status, updating the status, following customers' requests, transmitting that information to artists, and creating new artwork orders from sales. All work was done at the firm's location. There were staff meetings. The worker was required to provide the services personally with only the firm hiring/paying any substitutes.

The firm provided the premises, office equipment, supplies and materials. The worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The firm established the level of payment for services.

There were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship ended when the worker quit.

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. 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 throughout the entire work relationship. The worker continued to work set scheduled hours at the firm's premises even if her scheduled hours varied. 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. Her services were all performed at the firm's premises also illustrating control over the worker's behavior. 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 worker continued to receive an hourly rate of pay and had no other economic risk. 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 continued to process orders for the firm. When doing so, the worker was not engaged in a separate business enterprise. Her services instead remained essential to the firm's continuing operations. 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 for the entire time period and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.