

SS-8 Determination—Determination for Public Inspection

Occupation 02PDP.6 PublishEditProducing	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

Information provided indicated the firm is a production company. The firm stated the worker had been retained by the firm in 2013 as a publicist. The firm reported the income on Form 1099-MISC. As Publicist his job was to write press releases, distribute releases to media and print outlets. Track, monitor and evaluate media coverage, advise logistics of gallery shoots, electronic press kit and was point person for the media. No training was provided as the firm indicated she had prior experience. The worker determined, with production approval, how to perform her services. She reported to the producer if there were any issues. She performed services from home or the firm's office. Meetings with talent and the producer were held based on mutual availability. The firm indicated the worker would have hired and paid any assistants she needed. The worker was paid a flat fee, of Ten thousand dollars, she invoiced for payments. The firm stated the worker determined the level of payment. Either party could terminate the work relationship without incurring a penalty or liability. She was referred to as the show's publicist; services were performed under her name. The show ended, services were no longer required. The firm provided a copy of the employment contract with the worker that distinctly refers to her as an employee, and dictates direction and control throughout the contract. Specifically #2, Work Rules stated the employees services are subject to the direction and control of the company, and #16 which states the employee will comply with all rules and regulations of the company, code of conduct, Policy against sexual harassment, safety guidelines, foreign corrupt practices polices and general production policies and procedures.

The worker stated she had been retained by the firm as the unit production publicist. The worker provided three copies of said contract, the original, the revised and the actual signed contract. She indicated she had performed services for several weeks before the contract actually materialized as the firm did not want the income to go through payroll, thus the signed contract was required to be signed before she would be given her final check. Assignments were given from [REDACTED], and the producer for [REDACTED]. She reported to the producer and the PR team if there were any issues. She stated she was required to follow production hours, seven a.m. to seven p.m. or night shoots as was required, seven days a week when required. Services were performed on location, at the firm office and second line studios. Publicity staff meetings via conference calls were required. She was required to perform her services personally. The firm hired and paid all workers. The worker provided the equipment, and supplies, she provided a laptop computer and her own vehicle for travel. She was represented as the publicist for the film. The worker agreed the contract work completed.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. The contract between firm and worker specifically outlines employer/ employee work relationship. It states she was required to perform those services under the direction and control of the firm, and to follow all various rules, regulations and policies of the company and trade. She was given a guaranteed salary for the services performed. She was required to perform services during the production schedule.