

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL Salespersons	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm indicated the worker underwent training for setting up accounts with online Travel agents to sell the tour services. The work assignments would most often come from the owner. The firm was responsible for resolution of any problems or issues. The worker was required to provide commission reports of the Charter sales. The worker determined her own work schedule. Most work was performed on firm premises, she also worked from home. Staff meetings were attended by the worker. The firm hired and paid all workers. The firm indicated it provided the equipment, office space and supplies. The worker was paid on commissions. guaranteed Four-thousand a month per contract. The customer paid the firm. The firm indicated she was provided with insurance benefits. Either party could terminate the work relationship without incurring a penalty or liability. She did not perform similar services for others. The worker had no public contact with customers. The firm indicated she was offered a full time position which she declined.

The worker provided a copy of the firm's business card which identified her as Director of Sales and Marketing. It provided her company e-mail address and company phone/fax numbers. She indicated no training was required as she had previously owned her own business. Ideas for marketing were discussed with the owner and a coworker. The worker prepared numerous reports for the firm. The worker indicated her hours varied. Monday through Friday nine to six. She indicated most times she worked until ten-thirty due to sightseeing division. Work was performed on firm premises. The worker attended sales, staff, tour and travel meetings. She was required to perform her services personally. The firm hired and paid all workers. The worker indicated the firm provided all equipment and supplies. She was paid on salary. The customers paid the firm. The worker indicated the firm did carry workmen's compensation insurance. She indicated she also received paid vacations, sick pay, paid holidays, insurance benefits and bonuses, plus commissions. Either party could terminate the work relationship without incurring a penalty or liability. The worker was terminated by the firm.

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. All services were performed on firm premises, under the firm's business name. The worker was provided with a company business card that represented her as the Director for the firm. She performed services on a full time basis, indicating the firm had priority over her time. The worker was guaranteed a set monthly income, indicating no opportunity for profit or loss.