

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL.32 Salesperson	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's business provides for technology consulting/outsourcing services for custom software development. The worker was engaged to perform services in the capacity of an Account Executive, to sell the firm's consulting services to customers. The parties entered into an independent contractor agreement; as a result, the firm issued to the worker a Form 1099-MISC at year to report the monies received for his services as non-employee compensation.

The firm provided the worker with instructions/training on how to use its [REDACTED] system, as the firm needed some transparency of any potential work. The firm provided leads to the worker regarding prospective customers. The worker also obtained new clients by use of cold calls, e-mails, and meetings. All sales were submitted to the firm, and subject to the firm's approval. The worker performed his services at the firm's location, and in the field. He was required to provide the firm with pipeline activity reports before 5pm every Friday. The worker was not required to perform his services personally. Helpers would have been engaged by the firm. Work methods were determined by the firm and worker. Problems/complaints were reported to the firm for resolution purposes.

The firm provided the office space, all office supplies, laptop, cell phone, [REDACTED] access, and marketing materials. The worker provided a cell phone, and incurred expenses related to prospect lunches. The firm reimbursed for the expenses. The firm paid the worker a monthly base compensation, plus commissions for his services. Customers made payment to the firm. The worker did not incur economic loss or financial risk with regard to the services he performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits (paid vacations, sick pay, personal days, paid holidays), were made available to the worker. The worker did not perform similar services for others while engaged by the firm. Most advertising was done via e-mails that the worker sent to prospective customers. The work relationship was continuous as opposed to a one-time transaction.

Analysis

Although there was an independent contractor agreement in place between the parties, for federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at the firm's location, and in the field. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov