

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL.48 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 is a corporation in the business to distribute [REDACTED] Programs to health clubs. The firm engaged the worker as a salesperson. The worker filled out an application for the position. There was no written contract between the two parties.

The worker was trained by the firm on the firm's products and the worker provided copies of e-mails from the firm outlining the method she should use in acquiring a sale to a client. The worker was provided evidence from the firm how to give instructions on how to perform services at seminars. The firm required the worker to attend sales meetings and annual retreats. The firm required the worker to perform her services personally.

The firm provided the worker with the sales materials and access to their database. The worker did not lease any space to perform the services. The worker was reimbursed some cell phone expenses, internet and travel expenses. The worker stated she was paid both a salary and on commission while the firm stated the worker was only paid on commission. The worker stated she was guaranteed a \$35,000 salary. The customers paid the firm directly. The vice president established the level of payment for the services provided.

The worker provided a copy of her introduction booklet that outlined the annual salary, how bonuses are calculated, what holidays the firm would pay, how many vacation days the worker was allowed to take, how many minimum hours the worker was required to perform her services, allotted reimbursements for expenses incurred by the worker in performing her services, requirements of her sales to clients and instructions on the nightly reporting to the firm on sales made. The worker performed her services under the firm's business name. The services ended when the worker provided the firm with a two week notice.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

The term "full-time" may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses. See Rev. Rul. 56-694, 1956-2 C.B. 694.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

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Analysis

The worker was an employee according to common law. The information provided by both parties showed the firm did train the worker on how they wanted the services performed which showed control over the worker. Control was also demonstrated by the firm when the firm required the worker to attend sales meetings, sent emails instructing the worker how to make the sales and requiring the worker to report directly to the firm's Vice President regarding the sales. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as being interested in the end result as an employer. Financial control was demonstrated by the firm setting the worker's annual salary and determining how bonuses would be calculated. Financial control was also demonstrated by the firm setting the worker's amount to be reimbursed for expenses incurred by the worker. The firm set the amount of vacation pay the worker would receive which showed control by the firm. The fact the worker sold the firm's products under the firm's business name to customers showed the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989