

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL.67 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 [REDACTED] Manufacturer Representative. The firm engaged the worker to perform [REDACTED] Manufacturer Representative services in a assigned territory under the firm's business name. The firm provided the worker with policy and procedure training on the required processes used in performance of the services. The firm assigned the worker a territory to service. The firm provided the worker with an initial established customer list to contact as well as new leads received from the firm's customers that were in the assigned territory. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to submit weekly call sheet reports on customers serviced and showing the end results. The firm allowed the worker to establish his own work schedule. The worker performed the services at the worker's home office and customers locations. The firm required the worker to perform the services personally. The worker did not need the firm's approval to hire substitutes or helpers and the firm would not reimburse the worker if he paid any per the firm. The worker indicated the firm hired and paid substitutes or helpers if needed.

The firm's customers provided samples, literature, and materials on the products sold. The worker provided a home office and equipment, transportation, and personal items. The firm provided the territory and customer lists of established contacts. The worker did not lease equipment or space. The worker incurred expenses for transportation, travel, supplies, and telephone. The firm reimbursed overnight travel expenses. The firm paid the worker a commission per the firm. The worker indicated he was paid a salary and commissions and guaranteed a set monthly amount. The customers paid the firm. The firm did not provide workers' compensation insurance. The firm's customers determined the level of payment for the products sold and the firm determined the level of payment paid to the worker for providing the services. The worker's economic loss and financial risks were related to expenses incurred that were not reimbursed.

There were no contracts between the firm and the worker. The worker indicated he received paid vacation, holiday, sick pay, personal days, and bonuses as benefits. The worker did not perform similar services for others while performing services for the firm. The firm indicated they did not need to approve the worker from doing so. Neither the firm nor the worker indicated the worker did any advertising as a business to the public. The worker was referred to as a representative of the firm under the firm's business name. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker to perform customer service and sales to established and new customers in an assigned territory under the firm's name for the firm's customers businesses. The firm provided the worker with the necessary training and instructions on performing the services according to the firm's customers expectations. The firm, firm's customers, and the worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm allowed the worker to establish a work schedule. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with weekly call reports of contacts and results. The worker performed the services from home and at the firm's customers locations within the designated territory. The firm required the worker to perform the services personally. The firm would hire and pay substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the customers, the worker provided personal transportation, phone, home office, and the firm's customers provided sales information, samples, and brochures. The worker did not lease equipment. The worker incurred expenses to transportation and personal items. The firm reimbursed the worker for overnight travel and hotel expenses. The firm paid the worker a salary + commissions and the customers paid the firm. The firm determined the level of payment for the services and the firm's customers established the level of payment for the products sold. The worker's economic loss and financial risk were related to transportation and phone contact costs. The worker did not have control over profits made nor the risk of losses being incurred in performance of the services. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss.

There were no contracts between the firm and the worker. Per the worker employee benefits were provided during the working relationship. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous flexible schedule basis over a period of several years. The firm referred to the worker as a representative of the firm's business to the customers.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.