

SS-8 Determination—Determination for Public Inspection

Occupation 02SAL.105 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 payer is a sole proprietor in the business of the sales of [REDACTED] and [REDACTED] trucks. The payer engaged the worker to negotiate truck deals for the payer that met the prerequisites for the sale to the customers.

The worker stated he never performed this type of service so the worker received extensive training from the payer and the payer gave him usernames and passwords to get on specific sites for the worker to perform his services. The payer stated the worker received no training from them. The worker was given his assignments by the payer. The worker stated the payer determined how the assignments should be performed and the payer stated the worker determined how to perform his services. The worker stated he relied upon the payer to resolve problems and complaints and the payer stated the worker was not contacted regarding any problems or complaints. The worker stated he was required to provide to-do-lists, completed forms, profit statements, inspection sheets, and vendor invoices etc. while the payer said all reporting was voluntary on the worker's part. The payer stated they did not control the worker's daily schedule as the worker performed his services from his home. The worker stated he was required to attend telecom meetings and the payer stated the worker was not required to attend any meetings. The worker stated he was required to perform his services personally and the payer stated the worker was not required to perform his services personally.

The worker stated the payer provided him the information he needed for the usage of the software he needed to perform his services. The worker did provide his own computer, paper and phone. The worker was paid on a commission basis which was 30% of profit made from sales. The customers paid the payer directly. The worker was paid on a percentage according to an agreement between the two parties. The worker stated he could not suffer a significant loss in the performance of his duties.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm stated they ended the work relationship.

The payer provided information stating that he was responsible for the administration of the contracts including all pricing, ordering and delivery of all trucks. All orders go through the payer. The payer ended the work relationship. The firm provided a copy of an order by the worker showing the worker's commission earned on the sale.

The worker provided copies of invoices under the firm name that the payer represented himself as an executive vice president. The worker provided emails showing it was the payer that had the interaction between the buyer of the truck and the payer's business. Copies of purchase orders for the trucks were under the payer's name.

Analysis

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.

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

The worker was an employee according to common law. The information provided by both parties showed the payer did provide training to the worker as the worker had never performed this type of services before. According to the information provided the worker was required to get specific information when ordering specific trucks for the payer. Control by the payer was also shown as the payer reviewed all orders provided by the worker. The payer provided the worker with the usernames and passwords for the worker to use websites that were provided by the payer which demonstrated the worker did not have a significant investment in the performance of his duties. The worker could not suffer a significant loss. The worker performed his services for the firm full time and did not show a business presence regarding the services he performed. The fact the payer reviewed all orders so the orders met the requirements of the sale and made sure the trucks were ready as agreed upon showed the services provided by the worker were integrated into the payer's daily activity. The fact the payer retained the right to end the relationship showed control through the threat of dismissal.

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