

## **SS-8 Determination—Determination for Public Inspection**

Occupation

02SAL.112 Salesperson

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

### **Facts of Case**

The firm is operating a advertising business for customers in the legal business. The firm engaged the worker through an interview to solicit new potential customers for the firm's business operation. The firm provided the worker with instructions on job expectations and required the worker to post potential customer information on calendars with required information to allow the firm to contact them with regard to advertising their business throughout the [REDACTED]. All orders were subject to the firm's approval. The firm allowed the worker to use various means to solicit potential clients but instructed the worker not to make any business promises. The firm allowed the worker to perform the services at the firm's place of business, from home, and other designated locations. The firm required the worker to submit invoices for payment purposes. The firm allowed the worker to work on a flexible schedule. The firm required the worker to perform the services personally. The firm indicated not applicable to hiring and paying substitutes or helpers and the worker stated the firm hired and paid any if needed.

The firm provided office space, equipment, and materials at the office. The worker provided a personal laptop computer and phone. The worker did not lease equipment or space. The worker did not incur any on-going significant business expenses. The firm paid the worker per-diem for any out of town travel requirements. The firm paid the worker a set amount per month + commissions on sales of advertising he had set up. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services.

There were no contracts between the firm and the worker. The firm did not provide the worker with any benefits. The worker did not perform similar services for others while performing services for the firm. The firm indicated not applicable to worker advertising as a business to the public and the worker stated he advertised the firm's business with firm provided business cards. The firm referred to the worker as a contractor under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## 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 solicit potential customers for the firm's business. The firm provided the worker with job instructions and required the worker to post specific information on potential clients on the firm's software calendar in order for the firm to contact them with regard to the services being sold. The firm approved all sales and instructed the worker to not make any promises to potential customers when soliciting them. The firm determined the methods used by the worker 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 required the worker to provide the firm with invoices for payment purposes. The firm required the worker to perform the services personally. The firm allowed the worker to perform the services on a flexible schedule from the firm's place of business, home, or other designated locations. Substitutes or helpers were provided and paid by the firm if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided office space, equipment, and materials at the firm's place of business. The worker provided a personal laptop and cell phone. The worker did not lease equipment or space. The worker did not incur any significant business expenses. The firm paid the worker a set amount per month + commissions on sales of advertising approved by the firm that the worker had set up. The customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profit and loss with regard to the services performed for the firm's business operation. 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 profit or loss.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the public but rather advertised the firm's business with firm provided business cards. The firm referred to the worker as a contractor 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. 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.