

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

Occupation 03IEI.16 Inspector	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**

Information provided indicated the firm provided consulting services to manufacturing companies. The worker had been retained in 2014 and 2015 as a research specialist. The firm indicated he performed research at the direction of the Senior Research Analyst and Partners to support the company's client projects; compiled reports summarizing and describing the research performed. The firm reported the income on Form 1099-MISC. Both firm and worker provided a copy of the contract agreement. The firm indicated the worker was given guidance on the form the research deliverables were to take, and an introduction to several online subscription services used regularly to conduct research. Work assignments were via e-mail or in person from employees of the company engaged in client projects. The worker determined how he did the work, only the report form is specified. The worker would report to the Partners or a Senior Analyst if there were any issues. The worker submitted reports summarizing the results of his research, (examples attached) and timesheet reports. The firm indicated the worker did not have a set schedule, but did have deadlines for completion of certain assignments. He performed services on the firm's premises, but was free to work from home at his election. He was requested to attend client teleconferences to take project notes, no penalties for not attending. The firm provided office space, login credentials and subscriptions for on line services. He provided his own computer and cell phone. The worker was paid by the hour. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. There is a non-solicit section of the contract. He was represented as a research specialist, and work was performed under the firm's business name. The firm indicated the contract ended and was not renewed.

The worker agreed he was trained by a Senior Researcher how to obtain and add pertinent information to a client's needs to be reported directly to client representatives. The Senior Researcher or President of the company gave all work assignments. He would report to one of them if there were any issues. He submitted completed presentations or reports of the research findings. The worker indicated all work was performed on firm premises. He attended staff meetings. Services were to be performed personally. The worker agreed the firm provided the work space, office supplies, internet access, and access to paid services. He agreed he provided his own laptop. He agreed he was paid by the hour and the client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the [REDACTED]. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. 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.

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**Analysis**

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**ANALYSIS**

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, (and/or training) that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

**CONCLUSION**

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. The fact the firm provided training on the forms the research deliverables were to take indicated they expected the work to be performed in that manner. The worker performed services under the direction of the Senior Research Analyst of the firm. The firm directed and assigned all work assignments. The services were performed on firm premises, utilizing the firm's office space, supplies and Internet access. The fact the worker provided his own laptop would not be deemed a business financial investment. He was paid Sixteen dollars per hour, indicating he was not in a position to incur a profit or suffer a financial loss. The clients paid the firm for the services received.