

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.46 MiscLaborServices	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a debt collection agency and the worker performed data entry services for the firm from January 1, 2013 to December 31, 2015. The worker has performed services for the firm from 1984 in various positions. From December 26, 1984 to July 31st, 2005 the worker performed data entry as well as debt collector services. From August 1, 2005 to December 31, 2012, she performed services as an office manager. The worker performed these services as an employee (EE) at the firm's premises and her earnings were reported on Forms W-2.

From January 1, 2013 to end of the work relationship in 2015, the worker performed data entry services for the firm in her home as she moved out of state and away from the firm's premises. The firm reported the worker's 2013 earnings as well as the worker's 2014, and 2015 earnings on Forms 1099-MISC. The firm states the worker became an independent contractor when she moved out of state and she able to control the way she spent her time.

The firm provided no training or instructions to the worker in 2013, 2014, and 2015. The firm states the worker received her assignments from their management and the worker determined how she performed her services. The worker was required to personally perform her services at her home office out of state. The firm states the worker was required to notify the firm if any problems or complaints arose for their resolution. The firm states the worker was not required to submit reports or attend meetings and the worker's daily routine was determined by the worker.

The firm states they provided the computer network to the worker in order to perform her services. The worker provided and incurred expenses for a computer and supplies and a home office which the firm did not reimburse. The firm's clients paid the firm for services the worker rendered. The firm states the worker was paid on an hourly basis and she could not incur a loss as a result of her services.

The firm states the worker was eligible for paid vacations and paid holidays. The worker did not perform similar services for others and she did not advertise her services. Either party could terminate the work relationship at any time without either party incurring a liability.

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.

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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. In fact, the worker had been doing this job with the firm since 1984 so she knew what work needed to be done on a daily basis and she did it. She determined how she performed her services and she resolved most problems or complaints on her own. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with freedom of action as to when she performed her services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

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.

There was no evidence presented or found in our investigation that the worker had a investment in a business offering the same services to the public as she was performing for the firm. While the worker provided her own computer and office supplies, this is not considered a significant investment. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's 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.

Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.