

SS-8 Determination—Determination for Public Inspection

Occupation 03TEC.2 Technician	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 in the business of software development and support of state subsidized child care software programs which engaged the worker as a computer technician from 2004 to 2011. This was pursuant to a written agreement between the parties in 2004 when the worker relocated. The worker had previously performed services for the firm as an employee in the same capacity from 2000-2004, receiving a W-2 to report his income earned with the firm.

The worker stated he was trained in child care. The firm provided stated it provided training, instructions, and supervision as to the details and means by which the worker was to perform the services while the worker performed services at the firm's premises. The firm also stated the worker was responsible for all training, instruction and continuing education while working remotely. The worker received written instructions regarding the services to be performed on the firm's computer system called a task list. Invoices/timesheets submitted by both, the firm and the worker proves the worker provided services to the firm 5 days a week, from 3-8 hours a day, and received regular semi-monthly remuneration for his services. The worker normally provided services from 11:00 AM to 8:30 PM EST, in conjunction with firm and its client's hours of 8:30 AM to 5:30 PM PST. The firm stated the worker at all times determined the methods by which the assignments were performed. The worker stated the firm's project manager determined those methods. Both parties agree the firm was responsible for problem resolution. According to the firm the worker was not required to submit reports. The worker contradicted this saying; he was required to have weekly telephone calls set up to gauge status of projects. Prior to relocation the worker performed the services on the firm's premises. After relocation the worker performed the same services to the firm from his home. The firm stated the worker was not required to attend regular staff meetings while working remotely. The worker stated he had weekly staff meeting and weekly progress reports while performing services remotely. The relationship between the parties was continuous, from years 2000 to 2011, as opposed to a one-time transaction. The worker stated he was required to perform the services personally. The firm claims the worker hired and paid substitutes or helpers because he had his own business. The firm further claimed the worker provided the same services to others while working remotely and refused work because he had no availability due to running his own business. Internal research conducted provided evidence that the worker worked exclusively for the firm and in fact, did not own a business. His services were an integral and necessary part of the services the firm provided to its customers.

The firm furnished the worker with a telephone with internet capabilities (a virtual office), at no expense to him. The worker stated he did not furnish any of the tools or equipment used in performing the services, except for the use of his home. The worker stated the firm reimbursed him for books as well. The worker did not lease equipment. The worker did not incur significant business expenses. The worker was paid an hourly wage. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. All customers were the customers of the firm, not the worker's. He did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. In this case, the worker not only did not advertise his services, but he completed an application for a job. He was required to perform the services under the name of the firm and for the firm's clients. The firm provided a letter of resignation letter stating the worker would continue to remain an integral part of the [REDACTED] team as an independent contractor. The worker's location moved, nevertheless his job did not. He provided the same services remotely. The firm's contention that the worker was treated as an independent contractor pursuant to an agreement for him to be treated as such is without merit. It is the firm's responsibility to treat workers according to federal employment tax guidelines and law. Neither the firm nor the worker has the right to decide whether the worker should be treated as either an independent contractor or an employee. Worker status is dictated by the characteristics of the work relationship. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee. The firm also stated the worker started his own business and the firm became a client of the worker's business beginning April 16, 2004. Research indicates the worker never owned a business. Furthermore, the worker submitted a letter dated, October 1, 2008, stating the worker had been working from home since April 16, 2004. He is a senior programmer and valued consultant with extremely high likelihood of continued employment. The firm continued from 2004 to 2011 to have the worker listed on its web site as a staff member, complete with a picture of the worker and his professional bio. The firm also submitted a copy of a Form W-9 believing that this is indicative of an independent contractor status, the fact remains that the Form W-9 is simply used as an information document to verify a Taxpayer Identification Number, or a valid Social Security number and has no bearing on the SS-8 determination process. The Form W-9 is also used to indicate that the worker is not subject to "Backup Withholding" Backup Withholding is a specific type of withholding and should not be confused with Federal Income Tax withholding. The relationship between the parties is ongoing.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the worker's premises, on a regular schedule set by the firm. The firm provided all significant equipment to perform those services. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise his services, but he completed an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.