

SS-8 Determination—Determination for Public Inspection

Occupation 03TEC.35 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 a medical device engineering business that designs, manufactures, sells, and services medical imaging equipment. The worker was engaged to perform services as a Clinical Applications Consultant, to provide technical training to customers who purchased the firm's products. The services were performed under a Vendor Agreement, indicating that the worker would be considered an independent contractor. As a result, the firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker was required to shadow a full time employee at customer sites, and to attend training at the firm's factory. The firm provided the worker with initial training on the use of [REDACTED] and [REDACTED], and how to provide case support to physicians. Assignments were received via e-mail. The firm determined the work methods by which to perform the services, and was contacted regarding issues to be resolved. The worker was required to perform the service personally, mainly at customer locations. The worker was required to provide the firm with daily reports, final training reports, and invoices for payment purposes.

The firm provided the worker with a mobile CT device, training/case support materials, and manuals. The worker provided her personal phone, computer, tablet, and projector. The worker incurred expenses for travel, phone, computer, and general liability insurance as required by the firm. The firm reimbursed for travel expenses. The worker was paid a set daily rate, plus expenses as payment for her services. Customers made payment to the firm for services rendered. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services she performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others. There was no information provided to support that the worker advertised her services to the public while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov