

SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.3 Overseer

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm produces mouth pieces for patients with sleep apnea and mouth trays for teeth whitening treatments. The individual provided her services for the firm for the year 2011 and the monies she received for the services she provided were reported on Form 1099-MISC.

The worker stated she was hired by the owner of the firm. The firm provided the worker with training and she stated she received her assignments from the firm. The worker's responsibilities included making mouthpieces according to the owner's specifications. She provided these services Monday through Friday from 8:00 AM to approximately 3:00 PM. Although the firm stated the worker determined her own hours and methods, she provided these services on the firm's premises during the firm's business hours of operation and she provided these services personally. She attended training meetings regarding new production techniques. The worker was required to complete time cards. The worker stated the firm determined the methods in which the assignments were performed and if there were problems or complaints, the firm was responsible for problem resolution. The firm stated a coworker trained her and she determined her own methods.

The firm provided all the necessary supplies and equipment the worker needed to provide her services such as; the thermal forming machine, plastic and plaster. The firm stated the worker supplied a chair, heater and cleaning supplies. The worker stated she did not need to purchase or lease any significant equipment used in providing her services and she did not incur significant business expenses. The firm determined the level of payment and the worker received an hourly wage.

The worker ascertained that she did not provide similar services for others and did not advertise her services to maintain a business of a similar nature while providing her services for the firm. The worker provided her services under the firm's business name and she stated she was represented as the firm's part-time employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker resigned with two weeks' notice.

Analysis

The worker received training to provide her services. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker.

The worker rendered her services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were performed under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. 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. Her pay was based on an hourly wage. 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.

She did not have any financial investment in a business related to the services performed and could not have incurred a business profit or business loss in the performance of her services she provided to the firm. The worker provided her services under the firm's name, and her work was integrated into the firm's business and hours of operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

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.