

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.4 Overseer	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 moving referral service in the business of brokering out all their work to local moving companies. The worker provided her services to the firm in 2011 through 2013 as an office manager answering phones, filing, ran the third party work schedule, light bookkeeping, scheduled the techs work on a daily basis, and received the Forms 1099-MISC for these services.

The firm instructed the worker to do all the tasks the job required such as; how the office was run, how to do the books, and run the third party schedule. The firm contends that there was no instruction. The worker stated that she received her assignments from the firm's owner who told her what needed to be done, and the firm's owner determined the methods by which the assignments were performed. The firm indicated that there were no assignments but the worker determined the method by which the assignments were performed. If problems or complaints arose, the worker maintains that she was required to contact the firm and the firm was responsible for problem resolution. The firm expressed that the worker was responsible for problem resolution. The worker reported that the firm required her to submit an unpaid job list for the firm's vendor, and the third party schedule each day. The worker stated that she had a set schedule beginning her day at 9:00AM and finishing her day at 3:00PM every day. The firm contends that there were no reports and additionally, the worker did not have a set schedule. She provided her services personally on the firms' premises 100% of the time. If additional help was required, the firm hired and compensated the helpers.

The worker stated that the firm provided all the necessary supplies and equipment she needed to provide her services such as; the office, computer, furniture, supplies, and cell phone paid by the firm. Both parties agreed that the worker did not lease any equipment nor were any business expenses incurred in the performance of her services. The worker received a salary for her services regardless of the hours worked. The firm added that the worker was paid hourly for the services she provided. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm established the level of payment for the services the worker provided.

The worker reported that the firm provided her with sick pay and paid holidays. The worker did not perform similar services to others during the same time period. She provided her services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. In fact, the worker explained that the relationship ended when she quit.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of her services. 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, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. 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. 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. 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 had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. 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. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. 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 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 salary. 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm'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. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. Either the firm or the worker could terminate the agreement.