

SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.6 Overseer

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a registered investment advisor company. The worker had been retained by the firm in 2013 and 2014 to work in operations. The firm stated her "title" was 1099 contractor. The worker was hired as an independent contractor. She worked to produce products for training on her own schedule. She reported to the CEO for any issued or complaints. The firm stated they did not control her work schedule, and had no required meetings. The firm stated they provided no equipment or supplies. The worker provided her own computer, printer, all other supplies required. The firm stated she was paid on salary. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she was represented as a contractor, and the work was performed under her name. The firm stated she quit.

The worker indicated she was hired for operations of the firm. She provided a copy of her company business card, showing her company e-mail address. The worker stated they were required to follow the companies written policies and procedures. A copy of that hand book, has also been provided. The work assignments were determined via strategy meetings and task assignments. She reported to [REDACTED] CEO of the firm. The worker indicated she performed services Monday through Friday nine-thirty am to five pm, plus business trips, some weekends and holidays. She stated she initially kept track of billable hours in November, but was then moved onto a full time status. Services were mostly performed at the [REDACTED] office. She was required to perform her services personally. Weekly strategy and tactic meetings were held Monday, Wednesday and Fridays, there were also individual staff meetings. The worker indicated the firm provided deskspace, chair, whiteboard, internet, technical assistance, IT set, parking pass/space and meetings rooms. She provided her laptop or computer and cell phone. The firm reimbursed for travel, meals, cameras, tools and gifts (see travel and reimbursements). Either party could terminate the work relationship without incurring a penalty or liability. The worker stated she was represented in numerous ways as part of the staff for the firm. (Copies of the firm's organizational chart showing her as project manager, copies of media kits sent out which introduces her as "Operations Staff", Executive Summary Sheet for the firm, with her photo and it states [REDACTED] oversees business operations, A copy of her business card is provided. She is listed as executive staff in the firm's Business Plan-dated February 18, 2014. The worker stated she was terminated without severance package or unemployment benefits.

In addition to the documentation listed above, the worker has provided a copy of the firm's Compliance with Policies & Procedures Agreement as well as the entire booklet, a copy of the Employee handbook and Mission statement, a copy of the employee confidentiality and non-compete agreement, and a copy of a travel reimbursement for November 2013. She also provided a copy of the separate agreement, which was never signed. She stated she was later fired.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law."

Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Analysis

We have applied the above law to the information submitted. 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

RM Section: 7.50.1.5.11.1 Formal Determination

Conclusion: 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.