

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.27 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 worker initiated the request for a determination of her work status as a project coordinator in tax year 2014 having received Form 1099-MISC. The firm's business is described as project consulting. In this capacity, she worked as a liaison between the firm and clients and prepared estimates, schedules, and expense reports. The worker indicated she was working for another Consulting Group which sold its book of business to the firm in August 2014.

The worker continued to report to the 'principal' of the acquired Consulting Group; who she believed to be working for the firm after the acquisition. She received her job assignments via telephone and email. Any problems or complaints encountered by the worker were directed to the firm for resolution. There were no significant changes to the services rendered. She was provided with a computer, office supplies, and travel. The worker provided her home office; she did not lease equipment, space, or facilities and she did not incur expenses in the performance of her duties. After the acquisition the firm continued to pay her a salary. The worker was not at risk for a financial loss in this work relationship; she did establish the level of payment for services provided or products sold. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. She traveled to the firm's office and was apprised by the 'principal' of the former consulting group that nothing in her job would change as a result of the acquisition except that she would be paid by the firm.

The firm's response was signed by the firm's president. The firm's business is described as a general contractor. The firm responded in a subsequent telephone contact that there were no liabilities assumed under the acquisition of the Consulting Group in August 2014; firm purchased only the assets. The firm stated that certain people came with the purchase and at that time the firm decided to keep key employees. The firm did not know if they would keep the worker, but kept her on until they knew what to do. The firm did not have a contract with her. The firm continued to pay her a weekly salary as a consultant. The worker did not perform services for the firm. The worker would continue to report to the 'principal' and finish any existing jobs for clients. The worker was not at risk for a financial loss in this arrangement; she did not establish the level of payment for services rendered. There were no benefits extended to the worker during this time. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services during the same time frame. The firm decided not to retain the worker and the work relationship ended in October 2014.

Analysis

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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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.

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.