

## SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.30 Overseer

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The firm is in the business of operating a bed and breakfast inn. The worker was engaged as the manager/overseer of the operations who cooked, served breakfast, managed housekeeping, coordinated weddings, and handled reservations. She received a 2014 and 2015 Form 1099-MISC for her services. There was no written agreement.

The worker indicated that she received initial instructions on how to use the computer program, on all housekeeping duties as well as recipes. The firm noted that no instructions were given other than that the guests' experiences should be as good as possible. Only the worker noted that she received her work assignments via email/phone/or verbal contact from the owner; the firm noted that the worker determined what needed to be done. Each party indicated that the other determined the methods by which the assignments were performed though the worker noted that it was a collaboration between both parties. Each party indicated that the other would handle and resolve any problems or issues that arose. There were no reports required. The firm noted that the worker scheduled her own work routine to accomplish the required work. The worker noted that she cooked breakfast by a specified time in the morning, performed housekeeping if needed, answered the phone 24/7, checked in guests, and booked special events. Both parties agreed that she worked at the firm's location; the worker added she was also required to live there as well. The worker noted that she had to meet with any wedding party as required by the owner. Both parties agreed that the worker was to provide the services personally with the firm noting that the worker hired cleaning help but that the firm paid that help.

Both the firm and the worker agreed that the firm provided everything such as food, computer/software, bookkeeping, decorations, and use of the firm's debit card in addition to the facility itself. Both agreed that the worker received a set weekly amount and had no other economic risk. There were no advances - just the ability to use the firm's card to purchase supplies; anything over a specified amount would need the owner's approval. Both parties agreed that the customer paid the firm. The firm noted that it set the inn's rates but that the worker had the authority to offer a discount or change the rate as she saw fit; however, the worker noted that all prices and discounts were set by the owner.

Only the worker noted that there were paid vacations. Both parties agreed that either party could terminate the relationship without incurring a liability and that the worker did not perform similar services for others. Both agreed that the worker was responsible for the guests' positive experience at the inn. The firm had an online website that provided advertising/marketing. The relationship has ended.

---

## Analysis

---

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm provided the worker with instructions and her assigned duties, even if just initially. She performed her services according to the firm's expectations of a positive outcome financially, understandable as it was the firm that had the investment in the inn and could incur a profit or loss. So while the firm may have given the worker considerable latitude in how to achieve the financial success it required, the firm did not provide constant or daily supervision, but it still retained the right to do so. The worker was expected to cook, answer the phone, and check-in clientele. 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. In addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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. The firm provided the inn itself as well as all property, equipment, supplies, and materials needed for the day-to-day operations. The worker received a set weekly rate of pay, provided with on site lodging, and had no other economic risk. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

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. The worker was engaged to manage the firm's business, that is, the inn. She was not engaged in an independent business venture, but rather her services were essential and integral to the firm's continuing 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 whether that right to control is exercised or not.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.