

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.50 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

Information provided indicated the firm is a consulting firm. The worker was hired as director/client/partner success. Services were performed for tax years 2014, 2015 and 2016. The firm stated she was hired for her expertise/product knowledge and access to her network for sales. The firm indicated no pay documents were ever issued. The firm indicated no training or instructions were given. Work assignments were self-generated through her network. The firm indicated work was performed from her home in another state. She was paid on commissions. The firm was not happy with her services so the work relationship ended. The firm provided a copy of the W-9 form signed April 2016.

The worker filed the SS-8 request for services performed as a consultant, then later promoted to Director (see Press release of 2014). When interviewed she indicated the firm gave her the choice to be an employee or an independent, she chose employee status, and repeatedly asked for the promised paperwork and employment contract. (copies of the e-mails and employee agreement draft provided). The worker indicated instructions were given on how to test configurations work on a project, (see copies of e-mail between parties, showing direction and instructions) the sales territory to stay in, and times to be completed. She was required to submit status reports, and log all sales accounts. The work schedule varied dependent on client location, and projects, the firm controlled hours worked (e-mail from the firm saying to cut down hours etc. provided.) She agreed she primarily telecommuted from her home, with various travel to the company, client or partner meetings. Services were performed personally. The firm provided business cards, marketing and office materials, cell phone, and router. She already had a laptop, so she used that. She indicated she had a \$1200 monthly base salary, paid Fifty dollars hourly per task plus ten-fifteen percent commissions on sales. The client paid the firm. All work was performed under the firm's business name. She was terminated by the firm.

ANALYSIS

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.

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.