

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.7 Manager	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 in the business of providing a service to subscribers that contain job offers for voice over artists. The individual provided his services for the firm for the years 2008 through 2013 as a community manager and the monies he received for the services he provided were reported on Forms 1099-MISC.

The worker was hired for the position after completing a job application. The worker stated he did not receive training from the firm but was responsible for training staff members. The worker received his assignments from the firm and the firm determined the methods in which the assignments were performed. The firm stated that the worker received the assignments in weekly meetings and he determined the methods in which the assignments were performed. His responsibilities included: scheduling media posts, blogging and creating marketing newsletters, making sales calls, assisting customers and the staff. The worker stated he provided these services five days per week from 9:00 AM to 9:00 PM. He was required to complete key performance indicator reports, monthly updates for staff members, CEO of the firm, and the operations manager, to determine if their goals were being met. He stated that he was referred to as an employee by the staff members and he had to report his vacation days. He provided these services on the firm's premises for the years 2008 through 2009. For the years 2010 through 2013, he provided these services from his home. He provided these services from his home and it was understood that he would provide these services personally. The worker attended weekly update meetings. If substitutes or helpers were needed the worker in conjunction with the managerial staff hired them and it was the firm's responsibility to compensate the helpers. If problems or complaints arose as a result of the worker's services, the firm was responsible for problem resolution.

The firm stated that the worker signed a contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties.

Both the firm and the worker stated the worker provided his own equipment such as a laptop and microphone. The worker received a monthly salary. The worker stated that he was eligible to receive benefits such as paid vacations, sick days and personal days. The firm stated the worker did not receive benefits. The worker stated that stock options were available to him. The worker did not need to purchase or lease any significant equipment used in providing his services. Both the firm and the worker maintained that the firm determined the level of payment and the firm's clients paid the firm directly.

The worker stated he signed a contract when he was hired which stated that he could not provide similar services for competitors and signed a non-compete agreement at the time of his departure. He did not advertise his services to maintain a business of a similar nature while providing his services for the firm. He received business cards for conferences indicating the firm's name, website and phone number. The worker provided his services under the firm's business name and was represented as the firm's employee. Either party retained the right to terminate the relationship without incurring penalty or liability; in fact, the relationship ended when the worker resigned.

Analysis

The worker had the skills necessary to provide his services. By requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training or instruction was only given once at the beginning of the work relationship. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods in which the worker provided his services.

The firm instructed the worker regarding the performance of his services. A worker who is required to comply with another person's instructions about when, where, and how he 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 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments.

The worker rendered his 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. The worker provided his services under the firm's supervision.

The worker provided services for the firm in the firm's name and did not perform his services in the name of his own business. He did not have a financial investment in the firm's business and could not have incurred a business profit or business loss. The worker provided his services under the firm's name, for the firm's clients, and his work was integrated into the firm's business. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.