

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.16 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a next generation bio-technologies firm committed to the development of non-toxic, high efficacy, hygiene defense products which engaged the worker as an office manager from September 2010 to October 2012. There was no written agreement between the parties. The firm stated there was a verbal agreement that the worker would always be an independent contractor without benefits while the firm was in start-up mode and did not always have cash available. The firm stated the worker was contracted to create an accounting system for the company and to maintain the system until the company was strong enough to hire full time staff to take over those tasks. The firm also stated it believed she was an independent contractor because the worker was paid sporadically when money was available the same way it dealt with its vendors.

Both parties agree the worker did not require training on [REDACTED] accounting software because the worker has previous experience related to administrative and bookkeeping duties. The worker stated she received training from the firm on shipping and the products offered by the firm to its customers. Both parties agree the firm's majority owner provided the worker with daily instructions regarding the services to be performed and oversaw her tasks. The firm stated the worker set her own hours. The worker stated she originally began working Monday to Friday, from 9:00 AM to 5:00 PM, then from Monday to Thursday or Friday, from 7:00 AM to 3:00 PM. Her days and hours varied with the growth of the firm. The president of the firm cut her hours due to lack of the firm's growth. The firm stated the worker was given free reign to complete her tasks. As previously stated the firm's owner provided daily instructions and supervision of the worker which contradicts the statement that the worker had free reign to complete her tasks. The worker stated the firm's president determined the methods by which the assignments were performed. Both parties agree the firm's president was responsible for problem resolution, the worker also stated the vice president was responsible as well. All reports were generated through [REDACTED], which the worker set up for the firm for financial and inventory purposes. According to the worker she performed the services on the firm's premises. The firm stated she performed 75 percent on the firm's premises and 25 percent at her home. The worker stated impromptu meetings were called when all parties were on the premises and in attendance. The firm stated there were no required meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. The worker stated she worked exclusively for the firm. The firm stated the worker was observed performing services for others while on the firm's premises. Internal research indicated the worker did not perform the same services for others while providing services to the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm stated the owners would be substitutes or helpers when necessary.

The firm furnished the worker with office space, office supplies, computer and equipment, at no expense to her. The firm stated the worker chose the accounting software which was used and the firm paid the expense for the software. The firm also stated the worker used her personal laptop. The worker did not lease equipment. The firm determined the fees to be charged to its customers. The worker did not incur significant business expenses while providing services to the firm. The worker was paid an hourly wage. The firm's customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The firm stated there were no benefits provided to the worker. The worker stated she received paid holidays. Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. All of the customers were the firm's customers, not the worker's. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. In this case, the worker not only did not advertise her services, but she was interviewed for a job. She was required to perform the services under the name of the firm and for the firm's clients. The relationship between the parties ended when the worker resigned.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. 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. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she was interviewed for a job. This is a strong indicator that the worker is not an independent contractor. 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.