

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.21 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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. [REDACTED] responded to our request for completion of Form SS-8 on behalf of the firm.

From the information provided the firm is a day care center and the worker was engaged by the firm from August 17, 2013 to November 8, 2013 as a director. The firm withheld employment taxes from the worker's earnings as substantiated by the copies of the worker's check stubs submitted in this case. The firm's states the worker was set up as an employee at the start of the work relationship but due to her short period of work and the number of hours per week and actual work performed, they issued a refund check to the worker for the amount of the taxes withheld from her pay and reported the worker's earnings on Form 1099-MISC.

The worker's instructions were to care for the children at the children at the firm's daycare, she was to look for teachers to hire, and she was to comply with state requirements. The firm and the worker made the worker's assignments. The worker was required to personally perform her services at the firm's premises. The worker was not required to submit reports to the firm and she was not required to attend meetings. The firm states they were responsible for the hiring and paying of substitutes or helpers.

The firm states they provided the daycare and all supplies to the worker in order to perform her services. The worker did not incur expenses and they paid the worker at an hourly rate. The firm states the worker did not determine her rate of pay.

The worker did not perform similar services for others, she did not advertise her services, and she performed her services under the firm's business name. Either party could terminate the work relationship at any time without either party incurring a liability. The worker terminated the work relationship. The worker had no responsibility in soliciting new clients.

Analysis

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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his or her services should not be confused with the right to direct and control. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

The firm's statement that the worker performed services on a short-term basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants and is not a sole determining factor of a worker's status.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.