

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.42 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 physical therapy. The individual provided his services for the firm for the years 2007 through 2009 as an office manager. The monies he received for the services he provided for the year 2009 were reported on Form 1099-MISC.

The worker was hired for the position after completing a job application. The worker stated he received training from the firm. The worker received his assignments from the firm and the firm determined the methods in which the assignments were performed. His responsibilities included: general patient assistance, maintaining supplies, bookkeeping, making appointments, accounts receivables and payables, and marketing. The worker stated he opened the office at 8:30 AM and provided these services personally on the firm's premises. The worker attended staff meetings. The firm stated that for the year 2009 the worker was training his replacement and provided his services on a part-time basis. If substitutes or helpers were needed 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.

In the instant case, the firm's assertion is that the worker was an independent contractor because he was a part-time worker and was training his replacement. However, it should be noted that temporary or part-time status in itself does not determine worker status; it is the actual working relationship between the parties.

The firm and the worker stated that the firm provided the worker with all the necessary supplies and equipment the worker needed to provide his services. The worker received an hourly wage. The worker stated that he was eligible to receive benefits such as paid vacations and paid holidays. The worker did not need to purchase or lease any significant equipment used in providing his services. The worker maintained that the firm determined the level of payment and the firm's patients paid the firm directly.

The worker stated he did not advertise his services to maintain a business of a similar nature while providing his services for the firm. 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 patients, 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