

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.44 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm provides its clients, which generally are mortgage lenders and other financial institutions, with litigation support services. The firm or its contractors review mortgages, perform statistical analysis of such mortgages and prepare reports with brief narratives summarizing such analyses. The worker had been retained by the firm in 2013 and 2014 as a Senior Credit Officer. The firm reported the income on Form 1099-MISC.

The firm stated, other than giving statements of work, and paying her, they had no control over her performance, or work schedule. The IC contract clearly denotes an IC work relationship. The firm stated they provided project specific parameters prior to and during the project. Those were generally provided by [REDACTED] clients and third party consultants. The worker contacted the firm in an effort to become one of the firm's contractors for the projects they were working on. The worker determined how to perform the services per industry standards, not the firm's. She would contact the firm with respect to any administrative issues, such as payment issues. Generally no other problems or complaints arose. She provided analysis reports electronically to the clients. No hard copy reports were available. For eight percent of the project the worker determined when and where she worked and how many hours she worked. At other times, she was required by the client to work at specific locations (but still on her own hours) for efficiency & consistency purposes. No work was performed on firm premises. Meetings and conference calls were held but attendance was never mandatory and no penalty for not attending. The firm stated she was permitted to hire/contract with her own employees, payment would have been her responsibility. Due to strict client confidentiality and legal requirements, the firm provided a secure computer. The worker provided all other equipment and supplies. Aside from travel related expenses, she was responsible for all expenses incurred. All expenses reimbursed by the firm were passed on to the client. She was paid hourly (only because per unit payment was inefficient due to varying document size.) The customer paid the firm. The firm feels the worker bore all economic and financial risk. If the client did not pay the firm, the contractor would receive no payment (per contract). She bore the risk of damage and loss to her equipment since the firm only provided the computer. Compensation was negotiated between firm and worker. No additional benefits were provided. The firm could only terminate if the client terminated the project, other wise 18 days' notice was required by either party. The worker was permitted to work with the firm's competitors at any time. The only restrictions were on her ability to solicit the firm's clients, employees or contacts she gained from the firm. The firm's clients were made aware she was a subcontractor, not an employee of the firm. Services were performed under her own name. When the project was completed she was notified her services were no longer required.

The worker stated her title was Senior Credit Officer. She managed a team (already hired by the firm) of quality control analysts and underwriters for mortgage litigation on a project for a major bank, beginning in April of 2013. The worker indicated she was given periodic and mandatory training sessions by the firm and the client as details of the project changed or were updated. Work assignments were given by the managing director or operation manager. She stated she worked with the managing director daily to meet deadlines and oversee any issues with the work submitted. She is given time frames and deadlines to be completed. They provide weekly production logs to the office. They are advised when a deal is to be underwritten or reviewed for quality control, she has no control over the workflow, that is delegated by the managing director. The managing director determined how the work was performed and resolved any issues. The worker indicated she performed services 8-10 hours daily, she also worked weekends when required to meet deadlines. She stated she was required to work the hours set by the firm. She provided a weekly timesheet. She stated she worked onsite 50% of the time and remote 50% of the time, and at home, she also traveled for meetings. Meetings were attended as instructed by the firm. She stated the firm provided resumes for [REDACTED] to be hired. She stated the firm approved the resumes and the firm pays all workers. She indicated the firm provided a laptop, software systems, airfare, hotels, rental cars, and per diem, she is given a company e-mail address which utilizes their domain name. She indicated she maintained an internet connection and phone while working from home. The firm paid for travel expenses and per diem paid up front and not reimbursed. She was paid by the hour. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She did not perform similar services for others.

The worker stated she has worked as a contract employee since 2005 with several due diligence firms. She has worked in the banking field and performed reviews/audits for investment banks. She has always been paid by the hour and given a W-2. They have also paid her travel expenses and given her a per diem. [REDACTED] awarded her unemployment, a copy of the unemployment award letter is provided.

Analysis

Documentation provided by the worker that shows direction and control:

- An email from the managing director that stated everyone was to work late so they could get some production. They could not have anyone leaving at the "usual time of six pm and certainly not earlier.
- email to managing director requesting a Friday she needed off, she had forgotten about.

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. Both parties in the instant case have provided copies of the contracts, statements of work and work for hire agreements. The firm stated they had absolutely no control over the work performed or the hours worked. However, documentation provided shows the direction and control given by the managing director. From dictating the number of cases to be worked, (and the fact it would be tracked), the hours worked, (eight hours a day /forty hours a week.) they were in fact required and instructed to work late. The worker was paid by the hour and had no financial investment or expenses in operating, advertising or maintaining a business entity of her own.