

**SS-8 Determination—Determination for Public Inspection**

Occupation

04MAN.54 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a corporation in the business as a developer of mobile applications. The firm engaged the worker as a community manager/support specialist. The worker filled out an application for the position. There was a written agreement between the two parties.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The worker was trained on the firm's system and software. The worker received her assignments from the firm and the firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker performed her services at home and worked her own schedule. The worker was required to attend weekly meetings. The worker stated she was required to perform her services personally but the firm stated the worker was not required to perform her services personally.

The worker provided her own computer but the firm provided the worker with Skype phone call credits. The worker was paid on an hourly basis. The worker stated she began at \$10/hr. and received periodic raises until she received \$14/hr. The worker stated she was reimbursed Skype phone calls. The customers paid the firm directly. The worker could not incur a significant loss in the performance of her duties. The firm established the level of payment for the services/products provided.

The worker stated she received bonuses. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others at the same time she performed services for the firm. There was a non-compete clause in the agreement. The worker stated she was referred to as working for the firm and the firm stated they said the worker was a representative. The worker stated the firm discharged her and the firm stated the job was completed so the services ended. In researching the firm on the Internet the worker was listed as an employee.

**The Consulting Agreement**

- The agreement included the worker's project assignment
- The contract set the hourly rate of pay
- Expenses to be reimburse
- The schedule and specifications of the project
- The worker was not able to subcontract or delegate its obligations
- The firm could terminate the agreement at their convenience
- The worker was to assist the community manager
- It outlined the worker's specific duties
- The worker was required to provide 20 hours/week
- The first contract showed the worker would receive \$10/hr.
- Given access to the firm's communities
- If worker additional technologies the firm would provide it

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, 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 was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

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**Analysis**

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The worker was an employee according to common law. The information provided by both parties showed the firm showed control since they trained the worker, gave the worker her assignments and determined how those assignments should be performed. The worker showed a dependency upon the firm as an employer to resolve her problems and complaints. The agreement stated the worker could not subcontract or delegate her obligations to anyone which demonstrated the worker was required to perform her services personally. This showed the firm was interested in the methods used as well as being interested in the end result as an employer. Financial control by the firm was demonstrated by the firm setting the worker's hourly rate of pay and since the firm determined when and how much of a raise the worker would receive. It was the firm that could suffer a significant loss for lack of payment since the firm set the rate to charge the customers and was responsible to collect the amount they charged. The worker was represented as an employee on the firm's website which showed the worker's services were integrated into the firm's daily operations. The fact the firm could discharge the worker from her services showed control over the worker through the threat of dismissal.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341

Worker: Notice 989