

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.83 Manager

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The payer engaged the worker under his SSN to perform services as Director of Operations/Operations Manager. The worker answered a job ad online for the position. The worker performed services both in 2014 and 2015 tax years.

The worker stated she received training from the firm and was directed by the firm on a daily basis. The firm stated they did not train the worker. The worker received her assignments from the firm. The firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker was required to submit timesheets. The worker had a regular schedule from 9:00 a.m. to 5:00 p.m. The worker performed the majority of her services at the firm's location. The worker stated she was required to attend weekly meetings with the firm. The worker stated she was required to perform her services personally and the firm stated she was not required to perform her services personally.

The worker provided the worker with an office, office supplies and equipment for her to perform her services. The worker did not lease any space to perform the services. The worker was reimbursed mileage to perform some of her tasks. The worker stated she was also reimbursed for any supplies she purchased. The worker was paid on an hourly basis. The customers paid the firm directly. The firm established the level of payment for the services provided.

The worker stated she received insurance benefits and bonuses. The firm paid for ½ of the worker's health insurance monthly premium. Either party could terminate the relationship without incurring a liability. The firm stated the worker performed similar services for others and the worker stated she did not perform similar services for others. The worker stated she was represented as the firm's Operations Director and as the firm's Assistant. The firm stated the worker was their representative of their business. The firm and worker came to an agreement to end the work relationship.

The worker also provided copies of check stubs with reimbursement amounts for out-of-pocket expenses, a business card listing her as Director of Operations for the firm, a copy of a letter to the firm regarding a 6 month evaluation, a letter of recommendation stating the worker was employed by the firm and signed by the owner, [REDACTED] and a [REDACTED] from the [REDACTED] stating they found the worker to be an employee. The firm did require the worker to sign a separation agreement.

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.

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.

Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. In the instant case the worker was represented as the payer's Director of Operations.

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. In the instant case the worker did state the worker was required to perform her services during their daytime business hours.

If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. In the instant case the payer determined how the assignments should have been performed.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. In the instant case the worker provided proof she was reimbursed by the payer for airfare and out-of-pocket expenses.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the payer's customer for poor work, the payer shares the risk of such loss. Control of the payer over the worker would be necessary in order to reduce the risk of financial loss to the payer. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. There was no evidence showing the worker was operating her own business and could suffer a significant loss.

The worker was an employee according to common law. The information submitted by both parties showed the worker received her assignments from the payer and relied upon the payer to resolve her problems and complaints as an employer. Control by the payer was shown by requiring the worker to submit time sheets and to perform her services during daytime business hours. The payer had the financial investment as the payer provided the location for the worker to perform her services, office supplies and equipment the worker needed to perform her services. The worker did not have a significant investment in operating her own business as the worker was paid hourly for her services and was reimbursed out-of-pocket expenses i.e. mileage medical reimbursement, airfare, etc. It was the payer that had the potential of suffering a significant loss as the payer was responsible to collect the amount they charged to their customers. The worker's services were integrated into the payer's daily operations as the worker's business card showed the worker as the payer's Director of Operations. The worker also provided a copy of a letter dated May 22, 2015 that stated the worker was employed by the payer and the letter was signed by [REDACTED], the owner.

Based on the above analysis, we conclude that the payer 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 for further information.

Payer: Publication 4341
Worker: Notice 989