

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.112 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 a limited liability company in the business of renting wireless communication equipment. The worker was engaged as a salesperson/office manager. The worker filled out an application for the position. There was no written agreement between the two parties.

The worker did receive training on how the firm wanted the services to be performed. The worker stated he was flown to the main office in [REDACTED] for training also. The worker did receive his assignments from his manager either by phone or email. The manager determined how the assignments should be performed. The operations manager handled problems and complaints for the worker. The firm stated the worker was not required to submit any reports; however, the worker stated he was required to submit a weekly inventory report and was required to list all equipment rented by the production company. The firm stated the worker performed his services from 9:00 a.m. to 1:00 p.m. and the worker stated from 10:00 a.m. to 2:00 p.m. The worker performed his services at the firm's location. The worker stated he was required to call each morning for the day's activities. The worker was required to perform the services personally.

The firm provided the location, equipment and supplies the worker needed to perform his services. The worker did not lease any space to perform the services. If the worker was required to transport equipment he was required to use his own vehicle. The worker was paid hourly and the worker stated he also received commission. The worker stated he was paid \$6.35/hr. and 1.5% commission. The customers paid the firm directly. The worker could not suffer a significant loss in the performance of his duties. The firm established the level of payment for the services provided.

The worker stated he received vacation and bonus pay. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm stated the worker was represented as a contractor and the worker stated he was represented as an employee performing services under the firm's business name. The worker terminated his services.

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.

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.

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.

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.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker was an employee according to common law. The information provided by both parties showed the firm did control the worker by training the worker how to perform his services and then requiring him to perform the services personally. Control was also shown by the firm giving the worker his assignments and then determining how those assignments should be performed. The firm had the financial investment as the firm provided the location, equipment and supplies as an employer while the worker could not suffer a significant loss in the performance of his duties as being self-employed. The firm established the level of payment and the customers paid the firm directly which showed it was the firm that could suffer a significant loss due to lack of payment. The worker performed sales/managerial services for the firm which demonstrated the worker's services were integrated into the firm's daily operations.

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 for further information.

Firm: Publication 4341

Worker: Notice 989