

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.137 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

Information provided indicated the firm is a retail and wholesale jewelry business. The firm indicated the worker performed services as an ad hoc graphic designer and did miscellaneous piece work. The firm indicated she did work from July 2012 through 2013 as an employee, at which time she quit. At that time she worked Monday through Thursday nine to five, she did general admins for the firm business, administration, phone, mail, repairs, returns, packing, shipping, processing orders, data entry, pricing and line sheets, quality control and updating the company manual. That income was reported on Form W-2. From July 2014 to July 2016, she performed project based work, at her home. That income was reported on Form 1099-MISC. The projects were [REDACTED] and [REDACTED] projects. She created, modified and updated exclusive client project line sheets (“office work”) (copies of invoices were provided), communications were related only to projects, beading of the project order, shipping and ad hoc graphic designs. The firm indicated work assignments were given verbally; she had full control on how she performed those services. She provided invoices for the work completed. She determined her own schedule. The firm indicated they provided the inventory. She provided her computer, cell phone, printer and tools. The firm reimbursed for travel and auto expenses. The worker was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker performed similar services for others. The firm indicated all completed work was returned to the firm. She was referred to as a consultant on projects. Her services were terminated.

The worker stated her title was production manager. Her work included organizing purchasing and production of retail and wholesale goods, as well as the packing and shipping of goods. The worker indicated from 2011 through 2013 she was a full time employee. In 2013 the firm’s business location suffered flood damage, which is when she began working from home on a part time basis. The W stated she was given instruction to document all of the work done at home, to be available for communication at any time, to perform tasks as administered by the firm, in the priority given. She received work assignments to her company issued e-mail address. Progress reports were required on lower level employees, inventory reports, progress reports on projects and meeting agendas. She indicated she started work at nine am, and worked five to six hours per day, on average. She would begin to tend to all e-mails from [REDACTED] other workers, overseas production facilities and wholesale accounts. She stated she worked at home ninety percent of the time, at their office the other ten percent. She was required to attend weekly staff meetings. Services were to be performed personally. The firm hired and paid all workers. The worker indicated the firm provided all production and packing materials. She agreed she provided her own desk and computer. She indicated she was paid by the hour, she agreed the customer paid the firm. She indicated she either returned finished product to the firm or shipped it to the client as instructed by the firm. All work was performed under the firm’s business name, copies of company business cards with the workers name, phone and company e-mail address were provided. She was fired shortly after persisting to be put back on payroll. The worker provided numerous copies of e-mails to the firm reporting on inventory, the training/progress of a worker, asking questions on future meetings required, replacement of a worker that was leaving. E-mail from [REDACTED] asking for inventory reports from [REDACTED] and selling report from [REDACTED] every Monday in PDF format.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Analysis

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-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.

-A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

-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.

-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.

-Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

-The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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.

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. No evidence has been provided to show the worker had opened her own business, only that work had been performed at her home, instead of at the firm's location. The firm continued to provide materials and product, which was completed and either shipped to the firm's client or returned to the firm. The worker and firm provided documentation that showed the firm required various reports, whether the progress of a new worker, inventory reports, when they were due (every Monday, indicating a weekly continuing work relationship) and which format to send them to. The worker was paid by the hour for the services performed. Other than the fact the worker performed services at home, at no time did the firm indicate the services had changed from when she was deemed to have been an employee.