

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.138 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 corporation providing property management services to their customers. The firm engaged the worker as a property manager. There was no written agreement between the two parties. The worker filled out an application for the position and went through an interview process.

The firm stated the worker received collection training and the worker stated she received training on the computer, office and laundry. The worker stated she received her assignments from the firm and the firm stated the worker decided how the assignments should be performed. The worker stated the firm determined how the assignments should be performed. The firm stated the worker was responsible to handle all customer complaints and the worker stated she relied upon the firm. The worker was not required to submit any written reports. The firm stated the worker set her own schedule and the worker stated the firm gave the worker a set schedule. All services were performed at the firm's place of business. The worker stated she was required to attend staff meetings and the firm stated there were no meetings. The worker stated she was required to perform her services personally and the firm stated the worker was not required to perform her services personally.

The worker was provided with all the supplies, equipment and materials to perform her services. The worker did not lease any space to perform the services. The worker was paid on a weekly salary. The worker does not incur any expenses other than commuting in the performance of her duties. The customers paid the firm directly. The worker cannot suffer a significant loss in the performance of her duties.

The worker stated she received a paid vacation. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others. The worker stated she was represented as the Manager of [REDACTED]. The worker terminated her 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. In the instant case the firm did state the worker was trained on their collections process.

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. The worker performed services as a property manager for the firm's property managing company which demonstrated the worker's services were integrated into the firm's daily operation.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. In the instant case the worker was required to perform her services at the firm's location so she could handle any situations/issues that might come up for the day with the firm's clientele.

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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. The firm stated the worker was paid an annual salary that was divided by 52 weeks in the year to determine her weekly salary which demonstrated financial control by the firm.

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 in the instant case did not have a significant investment when she provided her services to the firm.

The worker was an employee according to common law. The information provided by both parties showed the worker applied for the position by filling out an application and went through an interview process. This demonstrated the firm was looking for someone that would meet the work qualification they required as an employee. The fact the worker did receive training from the firm demonstrated the firm was interested in the way the worker performed her services as an employee. The firm had the financial investment as the firm provided the worker with the location to perform her services, office equipment and supplies. The fact the worker received a weekly salary demonstrated financial control by the firm. It was the firm that could suffer a significant loss and the firm was responsible to collect the amount they charged to their customers. The worker stated she received a paid vacation which is an employee benefit from a firm. The worker managed the firm's property under the firm's business name 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