

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.142 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicates the firm is a non-profit civic symphony of [REDACTED]. The worker had been retained by the firm as its operations manager tax years 2014 through 2016. The firm provided a copy of the offer letter to the worker, hiring her as an independent contractor. Although this agreement was supposed to have been signed by both parties (a signed copy was not provided) the worker feels she was misclassified and should have been an employee. She was given training on how to access ticket orders, what updates to the database were needed, what arrangements to handle for each concert. Work assignments were given via e-mail. Per the contract she was to report to the [REDACTED]—primarily the Executive Director. The position was part time approximately 180 hours per year. She was required to provide updated customer Excel database for each concert. The orchestra has no office space, the worker could work wherever was convenient. Occasional meetings were required with the Executive Director. She was required to attend concerts to sell tickets. The firm provided the concert tickets and excel customer database. The firm indicated the worker had purchased stamps, which was reimbursed. The worker was paid a set monthly amount of \$166.67. The customer paid the firm. No Additional benefits were provided. Either party could terminate the work relationship without incurring penalty or liability. Either party was to give a two weeks' notice if they were going to terminate the work relationship. She was represented as the Operations Manager for the [REDACTED]. The firm indicated the worker quit.

The worker feels she was an employee and not a contractor due to the fact, her position was a regular managerial position within the organization. She was expected to be on call to perform her duties and received a set monthly income for those services. She was provided basic training on the technology utilized and how to handle operations. Work assignments were given face to face, via e-mail phone and text. She reported to the Executive Director. She was expected to be at most rehearsals (Monday nights) and all orchestra dress rehearsals, concerts and fundraising events. Work was performed at rehearsal/concert locations and from home. She was required to perform services personally. She stated the firm provided concert tickets and envelopes. She was paid on salary. The customer paid the firm. She agreed she was represented as the firm's Operation Manager. She left to pursue another career opportunity.

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

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. The worker received work assignments from and was required to report to the Executive Director of the Symphony. Training and instructions were given as to how the work was expected to be performed. Although part time, the worker was expected to be rehearsals, fundraising events and concerts, which indicated the firm did have control over her work schedule.

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. The worker was guaranteed a set monthly wage, indicating no opportunity for profit or loss.

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.

Case Conclusion: Based on the information provided and common law I find the worker to have been an employee. The worker did not own and operate a business to provide managerial services to clients. She worked as directed by the Executive Director of the firm. Training and instructions were given as to what was expected and how to run the database. The worker was guaranteed a set monthly wage, indicating no opportunity for profit or loss. Although the position was part time, she was expected to be at rehearsals, dress rehearsals and concerts and/or fundraising events.