

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE Instructors/Teachers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

Information provided indicated the firm is a [redacted] college. In tax year 2017 the firm reported income paid to the worker on Form 1099-MISC and Form W-2. The firm indicated the income reported on Form 1099-MISC represented payments made while the worker was researching information to add a new [redacted] program. She was paid for one hundred twenty hours at thirty-one dollars per hour for pre planning. She had been asked to track her hours, she did not. She told the firm those were the hours she had put into it. She was then hired (W-2) to build and oversee that program. The firm indicated pre work was done under a verbal agreement. There was an employment agreement, which was to take effect May 15, 2017, (copy provided), the firm stated the worker never signed it. The firm indicated the worker brought the program to the college, with the assurance she was experienced to direct it. Therefore, no training was provided. Her hours were to be nine to five, but she was out of office constantly. Program circulation was supposed to be produced, but never was. Work was performed on the firm premises. The firm indicated there were educational meetings. The firm provided the computer, books and office. The worker was paid on salary. The firm indicated the worker was not given benefits as she was on a 90 day probation. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as an employee. The firm indicated she was fired.

The worker contends she was hired in January of 2017. She states she had a waiting period before her insurance could take effect. The firm paid her insurance in June. The worker indicated she was trained on clock hour conversions and program development, she had no prior knowledge of that. She received work assignments and direction came from the firm. She indicated she could work any hours she determined she needed to, even after May, because of her health issues, she needed a flexible work schedule, due to her appointments. Services were performed from her home, campus, lab/classroom, conference room etc. She indicated she was not allowed to hire. She agreed the firm provided the laptop, e-mail, and equipment. The firm paid her trip to [redacted] for programmatic accreditation. She agreed from January to May she was paid by the hour, after she was paid on salary. She indicated after May she was given full benefits. She presented the completed program to the firm, at which time they told her the program was not going forward after all, and she was terminated.

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.

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.

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.

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. The firm has indicated the worker had been on a 90 day probationary period, so at that time no benefits were given. It was the intent when hired the worker would be the Director and instructor of the new program. The research to develop that program, was done so strictly for the firm, not as service provided to the general public. Insurance benefits were set up prior to the time the firm switched her to employee status, also indicating the intent was she would be an employee. The worker was paid by the hour during the initial first months, then on salary after, both indicating no opportunity for profit or loss. The firm provided the computer and supplies for the services to be have been performed.