

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 indicates the firm is a non-profit organization that works with youth in foster care. The worker performed services as a facilitator to facilitate workshops. The firm indicated it is funded by the State of Georgia through a contract that is for five years. They are in year 4. She conducted two hour trainings, when she was available. There is no mandatory work schedule. The curriculum is given to the contractor. The facilitator confirms via e-mail if they are available to conduct the workshop in their region. The training supervisor determines how the work is performed and is responsible for problem resolution. The facilitator provided attendance logs, Youth Surveys and Facilitator surveys. The facilitator did one to two trainings per month. Services are performed at the State Provider Agency or Group Home or DFCS office. Facilitator Retreats are held once or twice a year, it is not mandatory they attend. The firm indicated it provided the training materials and food. It reimbursed supplies, postage, hotel, if applicable and a travel stipend. The facilitator was paid a flat fee per training. The firm indicated the facilitator determined the level of payment. Either party could terminate the work relationship without incurring a penalty or liability. The worker is represented as an ILP facilitator on an annual contract with the firm.

The worker (facilitator) agreed the firm provided all lesson plans. A new topic was taught each month. She indicated she attended company training annually. The firm has a training coordinator and assistant who determined how the topics are instructed. They are also responsible for problem resolution. She indicated an evaluation of each workshop is required. Facilitators work two or more days per month, for two or more hours. Travel to assigned locations can be six or more hours round trip. the worker indicated annual training meetings were mandatory. She was required to perform services personally. The worker indicated she provided the food beverages, stationary supplies etc, but the firm reimbursed for all, plus mileage. She agreed she was paid a flat fee. Either party could terminate the work relationship without incurring a penalty or liability.

A copy of the contract agreements are provided. It stated the worker would be provided by a training coordinator with the curriculum for the workshop(s) in which facilitation will occur. It includes but not limited to; objectives, outlined agenda, description of how the event objectives will be achieved, description of how the youth will be engaged, (individual or group) activities, etc.

The worker is to submit a sign-in sheet from the workshops to the training coordinator. (firm will provide the sign in sheets.) The worker will submit participants evaluations to the training coordinator. the worker will submit the facilitator feedback form and mileage form to the training coordinator. The forms need to be submitted 48 hours following the workshop.

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.

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. All workshops are scheduled by the firm. The workers are then given the information, curriculum and instructions on how it is to be executed. The contracts are for a year period at a time, indicating, the worker is expected to be available at the times and dates scheduled. The worker is paid a set amount and reimbursed for supplies purchased, indicating no opportunity for profit or loss. The 2018 contract indicated she would be paid a smaller amount even if there were no attendees. The firm provided all forms, gave the expected agenda and how it was to be achieved, indicating direction and control.