

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.72 Instructor/Teacher	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a private school and the worker was engaged as a teacher. The firm states the worker performed services on a part-time, temporary basis. The firm also states the worker requested that a Form 1099-MISC be given to her to report her earnings. The worker personally performed her services from approximately 7:30 a.m. to 3:30 p.m. at the firm's premises. The worker was required to work from the teacher plans for each subject. The worker was required to submit grades for students and disciplinary reports to the firm. The firm reported the worker's 2014 earnings on a Form 1099-MISC. The worker was eligible for paid holiday leave.

The firm provided the books and workbook materials to the worker in order to perform her services. The worker provided exams/tests, dry erase markers, staplers and staples, and extra pencils. The worker also had to pay to make copies. The worker did not have an investment in a business related to services performed and she could not incur a loss as a result of her services. The committee at the school determined the worker's rate of pay. The firm states they were responsible for the hiring and paying of substitutes or helpers needed.

The worker did not perform similar services for others and she did not advertise her services. The firm represented the worker as a fellow teacher to the parents of the students attending the firm's school and at special events held by the firm. Either party could terminate the work relationship at any time without either party incurring a liability.

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.

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.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. Even when an organization allows a worker considerable latitude in performing their services, the retention of the right to give instructions or directions, without exercising that right, is enough to make the worker an employee. In many instances, this retention is indicated by the requirement that the worker provide the organization with frequent reports. An experienced worker is free and is expected to exercise his or her own judgment and initiative and is many times hired due to their experience and knowledge. The worker personally performed her services at the firm's premises and on behalf of and under the name of the firm's organization rather than an entity of her own. The firm alone had the ultimate right to determine what the lesson objectives consisted of and they retained the right to issue general instructions as to the means to be used to reach those objectives in order to protect their financial investment and the mission of the firm's organization.

The firm's statement that the worker performed services on a temporary, part-time basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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.

There was no evidence presented or found in this investigation that indicates the worker had an investment in a business related to the services she performed for the firm offering those services to the general public. The fact that the worker had a small investment in school supplies is not considered a significant investment. 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.

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 the firm's organization. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

The firm states the worker requested to not have employment taxes withheld from her earnings. However, this statement is irrelevant. If an employer-employee relationship exists, the firm is obligated, by law, to withhold the appropriate employment taxes.

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.