

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.78 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

Information provided indicated the firm operates a massage therapy business. The worker performed services as a massage therapist from 2010 through 2015. The firm reported the income on Form 1099-MISC. The firm indicated the clients call their office phone number and schedule with a therapist, by an appointment book. Work assignments were determined by whichever therapist the customer requested. The worker provided treatment notes per client, per law. The worker had her hours highlighted in the appointment book. She would text the office to see if anyone had booked. Services were performed at the firm's location. The firm provided sheets, lotions, oils, laundry service for sheets. The worker also provided lotions, oils other supplies she wanted. The worker did not lease space. The worker was paid according to the fee schedule, a copy of the rates paid was provided. The customer paid the firm. Either could terminate the work relationship without incurring a penalty or liability. The worker quit.

The worker agreed appointments were scheduled through the firm's receptionist. The worker did computer reports of the payments received. Two workers shared a treatment room between the hours of eight am to seven-eight pm. Services were performed on the firm's premises. The firm provided the space, tables, linens and determined rates to be charged. The worker did not lease equipment or space. She provided her own business cards. She was paid on commission. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker stated she gave her notice.

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. All services were performed under the firm's business name, on their premises, utilizing the firm's equipment and supplies. The firm stated the worker was paid on a fee schedule per treatment/length of time performed. The worker stated she was paid on a commission. Both parties agree there was no lease arrangement and the customer paid the firm.