

**SS-8 Determination—Determination for Public Inspection**

## Occupation

05ITE.87 Instructor/Teacher

## Determination:

☒ Employee☐ Contractor

## UILC

## Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a mental health agency that provides services to families of children with Autism, Asperger Syndrome and other disabilities. The firm indicated the worker provided services as a trainer, supervised therapeutic care. Services were performed in 2014, the firm reported the income on Form 1099-MISC. the firm stated the worker would come in from twelve to 3, or twelve to six or two to six, she chose her own hours. Services were performed at her home and at the firm's office (60%). Services were to be performed personally. The firm indicated they provided the computer and office space. Either could terminate the work relationship without incurring a penalty or liability.

The firm provided a copy of the independent contract service agreement. It states the worker as to provide coordination of services, development of treatment plans/inclusive goals and was an on call professional. It indicates the firm would assign the tasks and training to be performed and delivered by the worker. Both parties would agree to the design/plans developed for each client. The contract guarantees the worker a weekly salary of \$1500.00. The worker was required to submit written treatment plans, supervision logs, client contact and progress notes inclusive of start and end times of the services provided, along with the invoice for services. It also contained a non-solicit, non-compete clause during the time of the agreement and for one year after the contract ended. The contract would automatically renew on an annual basis, unless either party terminates in writing within ninety days.

The W filed the SS-8 for services provided as a teacher/instructor. The firm provides educational services for Special Needs students. The worker indicated she completed a job application form and did not bid for the position as an IC. She received in house training from the firm. The worker would receive work assignments from the owner of the firm. She worked 40 hours per week 8-4, Monday Through Friday. All services were performed on the firm premises, utilizing the firm's classroom supplies. She is required to meet with the student's parents, which may affect her evaluations. Services are to be performed personally. The worker is paid on salary. The parents paid the firm. The worker was given paid holidays, and personal days. Either can terminate the work relationship without incurring a penalty or liability. The worker became blind, thus ending the work relationship.

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.

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## Analysis

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A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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 work was performed under the firm's business name, for the firm's clients. All work was assigned and determined by the firm. The worker was required to produce numerous reports per client, reflecting the services, training, education and time spent on each. The contract was renewable on an annual basis, subject to both parties agreement. The worker was guaranteed a weekly salary. These are all indications of an employer/employee work relationship.