

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.37 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The worker requested a determination of employment status for services performed for the firm in 2013-2015 as a home health aide. The firm responded to our request for information. The firm stated:

The firm is in the business of home health care. The firm connects clients with caregivers to provide care in their homes. The worker performed services as a home health aide. She assisted patients with personal care and home making. The firm believes the worker was correctly treated as an independent contractor because she had the ability to accept or decline cases. The worker discuss what to do an when to work with each patient. The firm stated that there was a written agreement. The worker received no training. The firm called the worker with assignments and she was free to accept or decline. The client is the one that determined the methods. If problems occurred the firm is contacted for resolution. The worker was required to submit time sheets signed by the client that included an explanation of what the worker did for the client. All services were performed in the clients' homes. The worker personally performed her services. The worker incurred no expenses. The worker was paid an hourly rate and clients paid the firm directly. Either party could have terminated without liability.

The firm included a copy of the signed contract and example time sheets.

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. Therefore, a 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.

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 business. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker received her assignments from the firm and reported to the firm when problems occurred. She was required to track her time, what she did with each client and have the client verify by signature. You maintained the right to direct and control the worker in the performance of her services.

Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. You provided home health workers for clients and the worker provided home health services. She was not operating her own business.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker had no investment in the firm's business, received an hourly rate, and could not suffer a loss.

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.

Firm: For further information please go to www.irs.gov Publication 4341