

SS-8 Determination—Determination for Public Inspection

Occupation 05PRW.5 Public Relations Worker	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

The firm is a limited liability company in the business to provide there customers with marketing and public relations services. The firm engaged the worker for public relations and marketing. There was a written agreement between the two parties.

The worker stated she received training on the firm's software and camera training. The worker received assignments when attending client meetings. The worker stated the firm determined how the assignments should be performed but the firm stated the worker made that decision. The firm stated the worker was responsible to resolve her own problems and the worker stated she relied upon the firm to resolve her problems and complaints. The worker stated she was required to submit progress reports. The worker stated she was required to attend Monday morning meetings. The worker provided her services 45% at home, 20% at firm's location and 35% at the customer's location. The firm stated the worker performed 90% at home and 10% at client meetings. The worker was required to perform the services personally.

The firm provided the worker with a computer, printer ink and business cards. The worker stated the firm reimbursed her mileage. The worker was paid on a monthly retainer. The customers paid the firm directly. The worker stated the firm set the level of payment for the services provided and the firm stated they came to an agreement.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The firm stated the worker is represented to clients as a partner and the worker stated she is represented as she worked with the firm. The firm discharged the worker.

The agreement included the following:

- The worker was to provide services of Marketing, Public Relations, Social Media Management and Administrative Assistance.
- The worker was to perform other services as assigned by the firm
- The worker was to perform her services at places designated by the firm
- The worker would be paid \$3,000/month bi-monthly on the 1st and the 15th.
- The worker would be reimbursed out-of-pocket expenses.
- There was a confidentiality clause
- There would be a 21-day termination for both parties
- Upon termination the worker was to return all property (keys, files, computer, camera, business cards, notes, memos and equipment)

The worker provided a copy of the email where the firm discharged the worker. This email also included the firm giving the worker instructions on what services to perform.

The worker provided copies of business cards showing the firm and an e-mail address that was using the firm's company. This demonstrated the worker was performing services under the firm's name.

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.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. See Rev. Rul. 75-41, 1975-1 C.B. 323.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

Analysis

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.

The worker was an employee according to common law. The information provided by both parties showed the firm did control the worker by giving her instructions on how to perform her services. The fact the worker's schedule was set by the firm's clients' needs showed control over the worker. The worker was required to perform the services personally which showed the firm was interested in the end result as an employer. The firm provided the worker with keys, files, computer, camera, business cards, notes, memos and equipment which demonstrated the firm had the financial investment as an employer. Financial control was also demonstrated by the firm setting the worker's monthly salary and then increasing that amount. The fact the worker handled the firm's clients and set up how marketing should be performed by the firm's client showed the worker's services were integrated into the firm's business of offering public relations and marketing services to their clients. The fact the firm retained the right to discharge the worker showed control through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989