

SS-8 Determination—Determination for Public Inspection

Occupation

05PRW.14 PublicRelationsWkr

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information indicates the firm is an insurance agency. The worker had been hired to perform services as an agency producer for the firm selling under [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] and their subsidiaries. The firm reported the income on Form 1099-MISC for tax years 2014 and 2015. The firm provided copies of the District Manager/Agent Representative Appointment Agreement, Required Information Sheet, Agent Confidentiality and Security Statement, State of [REDACTED] Fair Claims Settlement Practices, Regulations Annual Certification sheet, signed by applicable parties. That contract stated the firm was solely responsible for the training of the representative. The firm agreed to assume all responsibilities associated with her "employment." The worker will act "strictly as an agent and representative of the firm." The firm indicated little training was required as the worker had prior experience from another agency. No assignments were given. Prospect leads were purchased by the firm and given to the worker to follow up on. She provided customer service as needed. Both the firm and the worker determined how the work was performed. The firm states no reports were required as policies sold shows up on commission folios which determined her work factor. She had the freedom to set her own hours, she preferred nine to five, Monday through Friday. No mandatory meetings were required, periodic discussions were held as needed. The firm provided all equipment, office space and supplies. The worker was paid by the hour and commissions. The customer paid the firm. The firm indicated they did carry workmen's compensation insurance. The firm indicated she was given sick pay and personal days. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated his agency was a "captive agent" for [REDACTED]. The worker could only sell [REDACTED] products, unless declined or non-renewed. When she left she took some business with her with no penalty. She was provided business cards and agency e-mail account by the firm. She left as she was hired by another company.

The worker agrees with the information above. She was instructed to sell insurance. Her hours were Monday through Friday nine to five. She opened the office, provided customer service as needed. Services were performed on firm premises utilizing their equipment and supplies. She agreed she was paid both on commissions and by the hour. She agreed business cards were supplied.

ANALYSIS

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. The firm indicated she was restricted from selling from any other company. Per the 'employment' agreement, the firm assumed all responsibilities associated with that employment, to include ensuring her compliance with any state-required continuing education with regards to renewed licenses etc. The agreement states she would act strictly as an agent and representative of the firm. This indicates she was not free to work for anyone else or sell for anyone else (independent contractor). The worker was paid by the hour, plus commissions. All work was performed on a full time continuing basis, under the firm's business name. (as indicated on firm provided business cards and company e-mail address.)