

SS-8 Determination—Determination for Public Inspection

Occupation 06MPX Medical Practitioners	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 an orthotics and prosthetics company. The worker was engaged as a fitter. She fit off the shelf orthopedic braces for the firm's customers. The firm states that it believes the worker was an independent contractor because she traveled to different places to fit patients. She also paid for her own schooling to become a fitter. The worker had a flexible schedule and would come and go as she had patients. She was able to take off when needed. The firm called the worker when a patient needed to be fitted. The worker contacted the firm with problems. Both the firm and the worker determined her methods. The worker was required to complete fitter notes. The worker personally performed her services at the firm's clinics and at doctors' offices. The firm provided all the materials and supplies needed. The worker incurred travel expenses that the firm reimbursed. The worker was paid an hourly rate and customers paid the firm. Either party could have terminated without liability.

The worker received Forms 1099 from 2 parties. One was from the firm and one was from a subsidiary of the firm. This is one work relationship. The firm sent in a copy of the employment letter offer. The firm also sent in the contract between the firm and the worker. The contract states that the firm also performs on behalf of affiliated entities listing the payer in the second 1099. The contract states that the worker is an independent contractor. There is a confidentiality section, agreement not to compete, and an employment at will section.

Analysis

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 the 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. Although the worker had flexibility in her schedule; the firm 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.

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. 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. The firm provided everything the worker needed. The worker performed her services as a representative of the firm and the firm's affiliates to the clients.

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. She was not operating a business of her own.

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