

SS-8 Determination—Determination for Public Inspection

Occupation 06NUR.7 Nurse	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 specialty chemical manufacturer business. The worker was engaged by the firm to perform services as a Consultant Occupational Health Nurse. The firm provided a copy of its Contract Occupational Health Nurse advertisement seeking candidates for this position. The firm and worker entered into a consulting agreement with regard to the services. As a result, the firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for these services as non-employee compensation.

The worker had a general duty to provide occupational health services to the firm's employees, on site at the firm's [REDACTED] plant, and to provide support to external providers at the firm's [REDACTED] and [REDACTED] plants. The worker's major tasks included management of the drug screening program, pre-employment physicals and screenings, emergency response, coordination of medical leave/return to work, and general first aid.

The firm provided the worker with site specific safety orientation, which included procedures for evacuation, emergencies, etc. The worker received electronic medical software training, NIOSH and breathalyzer training. Work assignments were received from the firm's medical department manager, and ESHA manager. The firm and worker both determined the work methods by which to perform the services. The worker contacted the medical department manager, or ESHA manager, regarding problems and complaints that needed resolution. The worker was responsible for resolution based on instructions she received from the manager(s). The worker was required to perform her services personally, at the firm's premises in [REDACTED], and to provide remote case management for the [REDACTED] and [REDACTED] plants.

The firm provided the facilities, all supplies, equipment, and materials needed to perform the services. The worker incurred expenses for travel, hotel accommodations, meals when traveling, and non-sufficient fund charges. The firm provided reimbursement for all approved expenses. The firm paid the worker a flat fee based on the provision of services on a weekly basis regardless of hours spent at the facility, or variations in the amount of consulting time spent each week. The worker was required to provide the firm with payment invoices, that included a gross receipt charge which was applied to the weekly fee in accordance with applicable tax regulations for performing services in [REDACTED]. There was no information provided for this case to evidence that the worker incurred economic loss or financial risk with regard to the services she performed for the firm.

Workers' compensation insurance was not carried on the worker. Employment benefits (paid holidays, personal days) were made available to the worker. The worker did not perform similar services for others. There was no information provided to evidence that the worker advertised her services to other while engaged by the firm. The worker performed her services under a contractual agreement. Services were to be performed during a contracted period of February 25, 2013 to February 24, 2014; consulting time was not to exceed 2100 hours. The work relationship ended before the contractual ending date.

Analysis

The 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 facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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 worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov