

SS-8 Determination—Determination for Public Inspection

Occupation 02ADM.10 Administrator	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 worker initiated the request for a determination of her work status as an [REDACTED]. In this capacity she processed all paperwork going through the office in tax years 2013 through 2015. The firm's business is described as a regional sales coordinator for the [REDACTED]. The firm's business recruits and trains insurance agents for [REDACTED].

The firm's response was signed by the owner. The firm's business is described as an independent insurance agent representing [REDACTED]. She sells health and life insurance, recruits new agents, services policy holders, and trains new agents. The worker performed recruiting and administrative work.

According to the firm, the worker was already performing this type of work for other independent agents. The worker had access to online databases and job boards through the firm's login/identity and she was able to perform resume searches through this access and notate the progress of new candidates and new interviews in the software program. The firm stated that the worker determined the methods to use for phone/email/frequency/follow-up. Any problems or complaints encountered by the worker were directed to the firm's owner since she is 100% responsible for recruits and clients. There were no reports required from worker as the firm is able to pull this information herself. The worker determined what hours she worked but primarily performed her job duties during business hours. The worker's services were rendered at the office and at her home/remotely; at times she could travel to recruit a candidate. The firm stated the worker was not required to perform services personally; she could hire and pay for helpers or substitutes and the firm's approval was not required.

The worker responded that she was given training and instructions to contact all applicants, set up interviews per the owner's availability, instructed to send reports to [REDACTED], update the website, prepare files, and answer phones. She was given her job assignments given over the phone or in person if the firm's owner was in the office. The worker responded that the firm determined the methods by which the worker's services were performed and that she was required to notify the firm of any problems or complaints. She stated that she was required to provide [REDACTED] with projection and recruiting reports based on figures provided by the firm's owner. The worker performed her duties at the office space leased by firm. The worker was required to perform the services personally.

The firm and worker concur that the firm provided a computer, office phone, internet access, office furniture and equipment. The firm responded that the worker provided a laptop computer, cell phone, internet access away from the office, email. The firm stated that worker incurred expenses for cell phone, travel to contract new agents, internet access, business cards, subscriptions to job boards; the worker did not acknowledge these expenses. Both parties are in agreement that the firm paid the worker an hourly wage and the customers paid the firm. The firm indicated that the worker was at risk for a financial loss in this work arrangement and that the worker established the level of payment for services rendered or products sold; the worker disagreed.

Both parties acknowledged that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm stated there was no measure of job performance. The firm responded that the worker performed same/similar services for others during the same time frame; the worker stated she was not working for others in the same capacity.

The firm responded that the worker was responsible for sourcing leads on the internet and that she had access to the firm's database. She made contacts with recruits and notated the information in a [REDACTED] software that the firm owned. The firm stated the worker provided recruiting and administrative services to recruit potential new agents for the firm's office.

Analysis

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. .

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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

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.