

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW Law Staff	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The payer is an attorney that provides a law practice to their clients. The payer engaged the worker as an assistant to assist the firm in providing legal writing services for the law practice. There was no written agreement between the two parties.

The worker stated she received the cases from the payer and the payer stated the worker learned her services from the explanations she was given. The worker received her assignments from the payer. The worker stated the payer determined how the assignments should be performed. The worker relied upon the payer to resolve her problems and complaints. The worker reported to the payer on the worker assignments assigned to her. The worker stated she had a set schedule Monday through Friday and the payer stated the worker had a flexible schedule. The worker performed her services at the payer's location. The worker stated she was required to attend meetings schedule by the payer. The worker was required to perform her services personally.

The payer provided the location, office equipment, materials and supplies for the worker to perform her services. The worker did not lease any space to perform her services. The worker was paid on an hourly basis. The customers paid the payer for the services they received. The worker could not suffer a significant loss in the performance of her duties. The worker stated the payer established the level of payment for the services provided and the payer stated it was a temporary agreement.

The worker received no benefits. Either party could terminate the work relationship without incurring a liability. The worker stated she did not perform similar services for others. The worker stated she was represented as the payer's assistant who performed services under the payer's name. The worker was terminated by the payer.

The worker provided a copy of a letter dated April 3, 2017 in which the payer terminated the worker's services. The worker provided copies of emails between the worker and the payer where the worker was updating the payer on the services she performed, what the payer would need to review for further instructions and instructions from the payer on what services the worker was required to performed for the payer.

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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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 the instant case the worker was the payer's assistant which demonstrated the worker's services were integrated into the payer's operation of her law practice.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the instant case, the worker was required to perform her services personally which demonstrated the payer was interested in the methods used as well as the end result as an employer. This was further demonstrated with the copies of emails provided by the worker between the worker and payer.

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. In the instant case, the payer paid the worker by the hour.

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. In the instant case, the worker could not suffer a significant loss as operating her own business.

The worker was an employee according to common law. The information provided by both parties showed the worker received her assignments from the firm and the firm determined how those assignments should have been performed. The worker provided evidence through emails sent and received to and from the payer for the payer's approval or suggestions on how the services should be performed. The fact the worker was the firm's assistant demonstrated the worker's services were integrated into the firm's daily operations. It was the payer that had the financial investment as the payer provided the worker with the location, office equipment and supplies the worker needed to perform her services. It was the payer that could suffer a significant loss as the payer was responsible to collect the amount the payer charged to the customer while the worker received an hourly rate of pay according to the amount of hours she performed her services. The worker could not suffer a significant loss in the performance of her duties as an independent contractor does have that liability. The fact the payer retained the right to discharge the worker showed control over the worker 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