

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.4 Receptionist	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 in the business of wheel and tire distribution which engaged the worker as a receptionist from February 2011 to December 2011. There was no written agreement between the parties.

The worker stated she received instructions from the firm regarding how to direct incoming calls and how to file documents. The worker received verbal instructions regarding the services to be performed. She worked Monday to Friday, from 10:00 AM to 6:00 PM. The firm's office manager and accounts payable department determined the methods by which the assignments were performed. They were also responsible for problem resolution. She performed the services on the firm's premises 100 percent. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. Her services were an integral and necessary part of the services the firm provided to its customers.

The firm furnished the worker with office space, telephone and computer, at no expense to her. The worker did not lease equipment. The firm determined the fees to be charged to its customers. The worker did not incur significant business expenses while performing services for the firm. The worker was paid an hourly wage. The firm established the level of payment for the products sold, not the worker. The firm's customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker received bonuses. Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. The worker did not perform the same services for others. She did not advertise her services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. In this case, the worker not only did not advertise her services, but she completed an application for a job. She was required to perform the services under the name of the firm and for the firm's clients.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she completed an application for a job. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.