

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.147 Office Worker	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 a house cleaner and laundry assistant in 2012; and, in 2014 as an office assistant. The firm's business is described as property management and real estate office. The worker did not work for the firm in 2013.

The firm's response was signed by the owner. The firm's business is described as a property management company and real estate. The worker was issued Form 1099-MISC for cleaning work performed and Form W-2 for administrative work pertaining to reservations. In 2014, the worker subcontracted work for website/media and laundry. In previous years she had worked for firm as a cleaner.

According to the firm, the worker had worked in previous years as a cleaner and therefore, no training was given. The instructions consisted of a list of details pertaining to each property and the 'quirks' of the property owners. There was no training or instruction as to laundry processing or website/media development. Any problems or complaints encountered by the worker would be resolved by the worker. The worker did provide records as to date of service, property location, hours worked, and estimates for cleaning. The services were rendered at the firm's properties or properties managed by the firm, at the firm's office, at the worker's laundry space, and the worker's home for the website/media development. The worker as not required to perform the services personally; she could hire and pay for substitutes or helpers.

The worker indicated that she was given specific training and instructions by the owner/manager. The job assignments were disseminated verbally or by email. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker indicated that the Form 1099-MISC was for 90% of her time performing office work; the remainder for laundry services. She stated she worked 9 a.m. to 6 p.m., 5 to 6 days per week; answering the phone, emails, making reservations, and working on the firm's website, and creating flyers. She did not do bookkeeping; she submitted a handwritten time sheet that firm's bookkeeper used to calculate her pay. She indicated that the 'walk throughs' on her time sheet represented checking the cleaning done on a room that had been cleaned by someone else. Her duties were primarily office administrative and occasionally she did clean a few properties. The worker was not required to perform the services personally; any additional personnel were hired and paid by the firm. She stated the firm put her on payroll in August.

The firm responded that nothing was provided to the worker. The worker furnished mops and brooms, cleaning supplies, vacuum, and cleaning rags. The worker did not lease equipment, space, or facility. The worker incurred expenses most likely for cleaning supplies, travel, vacuum. The customers paid the firm. The firm paid the worker an hourly rate for deep cleans and piecemeal for standard cleaning. The firm responded that the worker was allowed a drawing account for advances; the worker concurred that repayments were deducted from her paycheck. The firm responded that the worker's financial risk in this work arrangement was unknown; but, that the worker established the level of payment for products sold or services rendered. The firm acknowledged that the worker was treated as an employee for the role of the worker as an administrative assistant to help guests via internet leads to find vacation rental in the inventory of the firm; she is an employee for the reservations.

The worker replied that the firm provided laundry facilities, physical office, office equipment, backup cleaning supplies, and transportation. She agreed that she furnished transportation, cleaning supplies, and laundry facilities, if necessary. She did not lease equipment and did not incur expenses in the performance of the job. The firm paid her an hourly wage; the customers paid the firm. She was not sure if ; the worker was not sure if she was covered under the firm's workers' compensation insurance policy. The worker responded that she did not establish the level of payment for services provided or products sold. When she did the laundry she was paid \$5/room – agreed by both parties with the firm purchasing the laundry detergent. She was also paid rent to keep the laundry at her place – the laundry was just over \$100.

Both parties concur that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The firm stated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm responded that advertsing was done word-of-mouth. again, the worker was not in agreement.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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 firm's 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.

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.

CONCLUSION

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 pertaining to cleaning properties, doing laundry for the properties, or for website/media services.