

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.171 Administrative Assist	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

Information provided indicated the firm is a law firm. The worker performed services for the firm as an Associate Attorney. The firm reported the income earned on Form W-2 for tax years 2014 and 2015. The firm indicated the worker also performed the same services in 2012 and 2013. Both parties provided a copy of the employment agreement. The worker filed the SS-8, as he believes he was an independent contractor.

The firm indicated no formal training was given, but instructions were given by the firm's managing attorney, on a case by case basis. The firm indicated it determined how the methods by which the assignments were performed. The firm was responsible for resolving all issues pertaining to his company. The firm stated the worker performed services from eight-thirty am to six pm. Services were performed from the worker's home office (80%), courthouses (19%) and the firm's office (1%) of the time. The firm stated strategy conferences to discuss pending cases were held either by phone or in person. He was required to perform his services personally. The firm indicated it provided paper, folders, envelopes, and research database and computer software. The firm stated the worker was reimbursed for all expenses that are billable to the firm's clients. The worker is paid on a commission basis. The clients paid the firm. The firm did carry workmen's compensation insurance. The firm indicated insurance benefits were provided. The firm indicated the work relationship could only be terminated with written notice (Section 7 of the employment agreement). The firm stated the worker held a second job as a document reviewer for part of 2014. The firm advertised the worker as an associate attorney of the firm on its website [REDACTED]. The finished work is either filed with the court, mailed to opposing parties or returned to the firm. All services were performed under the firm's business name.

The worker indicated he felt he was an independent contractor as he did not report directly to clients. He performed all work remotely at his residence, dates and times the work was performed had been at his own choosing, as long as the assigned work met general deadlines dictated by the circumstances of the matter. He indicated he used his own computer and/or other resources. He indicated he worked full time at another job. The worker agreed he was paid on a commission basis. If the client did not pay the firm, he did not get paid, thus could have incurred a loss. The worker continues to be employed by the firm.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. Although services were performed off site, the firm controlled the assignment of work, and all work completed was returned to the firm, or signed off before presentation to courts and clients. The firm and worker both provided a copy of the employment agreement.