

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.213 OfficeWorker	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 a legal service business operation. The firm engaged the worker through a referral to perform office work for the firm's business. The firm provided the worker with the necessary training to perform the services according to various regulations. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for final resolution. The firm required the worker to provide the firm with invoices reporting hours worked and updated customer logs. The worker performed the services at the firm's place of business or other locations on a flexible schedule per the firm. The firm stated the worker was not required to perform the services personally and the worker indicated she was. The firm hired and paid substitutes or helpers if needed. The worker was required to obtain the firm's prior approval to hire any.

The firm provided office equipment, materials, and supplies. Per the firm the worker provided home office equipment, materials, and supplies. The worker did not lease equipment or space. The worker incurred office supply expenses per the firm, the worker indicated no expenses were incurred. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and increased the hourly wages yearly. The customers paid the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the services per the worker, the firm stated the original hourly wage was determined by the worker.

There were no contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement. The firm provided the worker with paid leave benefits and bonuses. The worker did perform similar services for another attorney and was not required to obtain the firm's prior approval. The worker did not advertise to the public as being engaged in a business. The firm referred to the worker as an office worker to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. In this case the firm engaged the worker through a referral to perform office work for the firm's business operation. The firm provided the worker with the necessary training and instructions on how to perform the services. The firm assigned the worker services to perform based on the firm's business needs. The firm and worker determined the methods used by the worker to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with invoices showing hours worked and updated client reports. The firm allowed the worker some flexibility in work hours and locations to perform the services. The firm required the worker to attend staff meetings. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided office equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items when working from home. The worker incurred home office related expenses which were not reimbursed by the firm. The firm paid the worker an hourly wage and increased the hourly wage during the working relationship. The customers paid the firm. The firm determined the level of payment for the services paid by the firm's customers and verbally agreed between the firm and worker at the beginning of the working relationship. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to performance of the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated there was a verbal working relationship entered into. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did perform similar services for another attorney and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business mostly at the firm's place of business on a regular and continuous basis over several years under the firm's business name.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.