

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.235 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 worker initiated the request for a determination of his work status as an office manager, performing billing, scheduling appointments, collecting payments, reconciling past due accounts, and assisting with patient treatments when required in tax years 2012 and 2013. The firm's business is described as a hormone replacement therapy clinic with acupuncture and chiropractic therapy.

The firm's response was signed by [REDACTED], Chiropractor/Acupuncturist, sole proprietor. The firm's business is described as Chiropractor/Acupuncture/Preventative healthcare. The worker performed managerial services, billing, and collecting services.

According to the firm, the firm has two billing programs and the worker familiarized himself with them. The work assignments with were a result of outstanding invoices. The firm alleges the worker had a DBA and that the worker's business determined the methods by which the services were performed. It should be noted that no business was located for the worker. The firm stated that the worker dealt with problems; although sometimes the firm was consulted. The worker's hours varied according to the worker's other commitments. The worker's services were rendered at the firm's business location. The worker was not required to perform the services personally; the firm owner would do the work herself.

The worker responded that his training was on-going as to billing insurance, scheduling appointments, charting patient records, and ordering supplies from medical and office catalogs. The job assignments were determined by the firm; and, it was the firm that 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 services were rendered at firm's premises; his daily routine consisted of opening the clinic at 9 a.m., preparing rooms for patients, begin the billing, complete and update patients' charts, and answering the phone. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

Both parties concurred that the firm provided IV equipment, BP cuff, scale, and all other medical supplies and equipment in addition to office equipment such as computer, computer programs, paper, and postage. The worker furnished nothing and he did not incur expenses in the performance of the job. The firm paid the worker an hourly wage; the patients paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for services provided or products sold.

The firm and worker acknowledged that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

The firm provided a letter dated 7/31/2013 in which worker acknowledges that he was hired as an Independent Contractor to perform management duties; he was to produce a DBA. Another letter dated and signed by worker on 3/15/2012, as an independent agent, deemed to be an independent contractor.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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 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 in 2012 and 2013.