

SS-8 Determination—Determination for Public Inspection

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| Occupation OFF02.251 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

Information provided shows the firm is [REDACTED] located in [REDACTED]. The [REDACTED] has requested the firm seek work classification determinations for the occupations/individuals performing services for the Agency. This worker performed billing services for tax years 2013 to present. The firm indicated no training or instructions are given, she came to firm with billing services experience. The Director or Administrator determined how the work was performed and they would work together to resolve any issues that may arise. The Biller makes sure the medical office cycles run smoothly by assembling all data concerning the bills (charge entry, claims transmission, payment posting, insurance follow-up & Patient follow-up). She works three days per week four hours a day. The work is performed on the firm's premises. The firm hires and pays all workers. The firm indicated they provided all equipment, materials and supplies. The worker is paid a lump sum, the customer pays the firm. Either party could terminate without incurring a penalty or liability. The firm stated she was represented as a contractor; the services were performed under the firm's business name. The firm indicates the worker is still performing services.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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. No evidence has been submitted to indicate the worker owns her own accounting company or firm. All services appear to have been performed under the direction and control of the Director and/or Administrator. The worker incurs no business or financial expenses in the course of her services for the firm.