

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.41 Manager	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 was a small business loan company. The worker had been retained by the firm as an office manager for tax years 2009 through 2014.

The firm stated the worker had been referred through a friend. The firm stated he had the license from the state for the small loan company. The worker came and met with him, and stated she had the knowledge to run the business (keep up with state laws, fill out all the paper work etc. The firm stated he provided the license, building and cash. She was to take it from there. She set the hours where she worked, left when she wanted and changed days of the week to be open at will. She told him what she thought she could bring into the business each month based on where she had been doing this. She did everything, paid bills, took care of money, bank deposits, took so much money a week for running the store. He stated they would pay bills and see at the end of each month what was left. He stated she was a business partner.

He stated at first she made the business a little money (he was lucky to make \$500 per month). The office is thirty miles from his home. He was willing to keep the business open as long as he was making money. He stated the worker paid her own bills and always knew she was not an employee. When the business began to fall off, she was the only one making any money. They discussed closing the store. By that time she had some health issues, he never knew when she was there and when she wasn't. They agreed to keep the store open, to help with her medical bills, as long as the store could pay its bills. It got to the point the store was not making any money and he decided to close. He feels if anything she should be paying him. She used her own car, her computer and she was also the one the state would meet with when they checked the business' paper work.

The worker stated she hired to perform services as an office manager. She prepared loans, waited on customers, did collections, bank deposits, and paid bills for the firm. It was not her company, [REDACTED] owned the company. She stated she was shown how to do the forms and daily logs. She provided the daily log reports, cash flow sheets, bank deposits etc. She worked on firm premises from nine a.m. to five p.m. She was required to perform her services personally. The worker indicated the firm provided all supplies. She stated she was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker stated she was let go.

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.

Therefore, your 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.

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.

Analysis

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. See Rev. Rul. 56-660, 1956-2 C.B. 693.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. See Rev. Rul. 71-524, 1971-2 C.B. 346. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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. The firm stated he possessed the state license, provided the work space and the cash to operate the business. The worker had been retained to manage the business. That did not make her a partner in the business. She was paid by the hour for the services performed, but otherwise had no financial investment or obligations to continuation of the business. The fact she had a flexible work schedule, does not make her an independent contractor.