

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.80 Instructor/Teacher	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 public speaking training business that provided in-house training, and company training. The worker was engaged to perform services as a trainer and coach. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker attended training, and took an evaluation test to see whether she could perform training. After that, she conducted training by herself using her own work methods. Problems the worker could resolve were reported to the firm for resolution. The worker was required to perform her services personally, at her residence, at the firm's premises, and at client locations. The worker was required to attend weekly staff meetings to discuss updates, goals, etc. Helpers/substitutes were engaged by the firm, and paid by the firm for their services.

The firm provided a video camera, office space, packets, markers, training workbooks, chairs, tables, general office equipment, and a company phone needed to perform the services. The worker provided a laptop, writing notebook, and phone. The worker's expenses included travel to office locations and meals while working. The worker was paid on an hourly wage basis, receiving monthly compensation. There was no information provided to evidence that the worker incurred economic loss or financial risk related to the services she performed for the firm.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker; the worker made up any time that she was sick. The worker did not perform similar services for others. Her name was on the firm's company business cards, and company email address. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, and routine in the performance of her services. The worker's services were performed personally, at the firm's location, at her residence, and at client locations. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov