

SS-8 Determination—Determination for Public Inspection

Occupation

02LAW Law Staff

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

Information provided indicated the firm is a law firm. The worker provided services as a law clerk for tax years 2017 and 2018. The firm indicated she was a full time law student seeking experience. She controlled her hours. The worker observed and was working with one of the lawyers in the office and received training and assignments from her. The firm indicated there was no set schedule. There were no meetings required. The firm provided equipment and supplies. She provided her own computer and phone also. The worker was paid by the hour. The customer paid the firm. No additional benefits were given. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated her school year ended and she left.

The worker agreed she performed services as a law clerk for the firm, drafting forms and letters and performing research. The firm provided instructions on how to fill out legal forms and communicates their expectations for each research assignment. Work assignments were given through a direct supervisor. the worker agreed the hours were flexible and scheduled around her classes, as this was a student job. She indicated she was working approximately 15 hours per week. She indicated the firm provided all equipment and office supplies. She agreed she was paid by the hour. The client's paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She was represented as a law clerk for the firm. All work was performed on the firm premises.

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. The worker was a law student performing services for the firm at an hourly rate. She did not own and operate her own business to perform those services. Paid internships are taxable income for income tax and Social Security and Medicare tax. The worker received training and instructions from the firm. All work was performed under the firm's business name, as a law clerk of the firm.