

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.223 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 submitted a request for a determination of worker status in regard to services performed for the firm from November 2014 to November 2015 as a clerical office worker. The work done by the worker included answering phones and maintaining vacuums brought in by customers. The firm's business is selling vacuum cleaners. The firm issued the worker Form 1099-MISC for 2015. A copy of the 2014 tax reporting document, if applicable, was not provided to this program. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

A request for information was mailed to the firm. In response, Form 8821, Tax Information Authorization was received. The firm's appointee stated the worker was originally engaged as an independent sales person. When that work relationship did not work out, the firm engaged the worker as an office clerical worker. The firm wishes to proceed with the determination request.

This determination will address the services performed by the worker as a clerical office worker and not those services performed as a sales person.

The worker stated the firm provided her three days of training when she was first engaged to perform services. The firm provided work assignments, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. Reports were not required. The worker's routine consisted of answering phones, cleaning the office, handling office customers, preparing paperwork for new trainees, and shopping for office supplies. The worker performed services at the firm's office on a regularly scheduled basis. The firm required the worker to attend a daily morning meeting. The firm required the worker to personally perform services. The firm was responsible for hiring and paying substitutes or helpers.

The firm provided all office equipment and materials. The worker did not lease equipment or incur unreimbursed expenses. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker did not incur economic loss or financial risk. The firm established the level of payment for the services provided.

Benefits were not made available to the worker. The work relationship could be terminated by either party without incurring liability or penalty. The worker did not perform similar services for others. There was no agreement prohibiting competition between the parties. The worker's name was on the firm's advertising. The firm represented the worker as an employee to its customers. The work relationship ended when the worker left on good terms for another job.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

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 clerical office services performed by the worker were integral to the firm's business operation. The firm provided work assignments, determined the methods used, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

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. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.