

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.16 Overseer	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 requested a determination of employment status for services performed as clinical director for the firm in 2010 to 2014. The firm is a substance abuse treatment center and responded to our request for information. The worker performed services for the firm in previous years as a counselor and was treated as an employee.

The firm's SS-8 response stated: The worker was the clinical director since 2010 and he was in charge of the day to day operations. The owner was ill and unable to run the company full-time. The worker determined what he needed to do and what methods he used himself. The worker was required to prepared reports for the executive director. The worker personally performed his services at the firm's location and other locations as a representative of the firm. The worker was required to attend various meetings with the firm. The firm provided what was needed to do his job. The worker received a salary and was allowed a drawing account for advances. Customers paid the firm directly. The firm stated the worker had no benefits.

The current owner believes that there was originally a contract and that the worker had agreed to be an IC. The firm stated he was a contract employee. He was completely in charge of himself and several employees beneath him. He hired, fired and gave the staff training as he saw fit. He also took out loans from the business accounts. The firm attached his job description, a copy of his professional liability insurance, a verification of employment letter from the state, an incident report, a memo from his desk, a debt finalization document stating that the firm did not owe him any money, a leave request where he acknowledged he was an IC, an EIN application, a confirmation letter where he acknowledges he was an instructor and copies of his 1099s.

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. 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.

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 the business. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The worker had a lot of freedom in performing her services because the owner was ill and trusted him. The firm always maintained the right to direct and control the worker, whether or not it exercised that right.

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. There was no evidence that the worker performed any services of an independent nature. He performed his services as a representative of the firm for the firm's customers.

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. The firm provided everything the worker needed. 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The worker had no investment in the firm's business, received a salary, and could not suffer a loss.

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.

Firm: For further information please go to www.irs.gov Publication 4341