

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.13 MiscLaborServices	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 corporation providing Landscape Architectural services to their customers. The firm engaged the worker as a landscape architecture. In the beginning of the work relationship the worker performed services part-time for the firm from September 2011 to September 2013. In 2013 the firm then hired the worker as a full-time employee and the worker was put on salary. The worker was also required to perform additional services as a full-time employee.

The worker stated she did get some instructions on work that was not typical. The firm assigned the worker tasks and the worker would be part of a team performing services. The worker relied upon the firm to resolve problems and complaints. The worker was required to submit the amount of hours she performed services for the firm. The worker was required to attend staff meetings. The worker performed the majority of her services at the firm's location. The worker was required to perform the services personally.

The firm provided the worker with an office, office equipment and supplies she needed to perform her services. The firm reimbursed the worker for mileage expenses. The worker was paid hourly from 9/2011 to 9/2013 and then was put on salary. The customers paid the firm directly.

The worker received no benefits when she was paid as a contractor. The worker received employee benefits once she was hired full time. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. In the beginning of the work relationship the worker was represented as a consultant. The worker always performed services under the firm's business name. The firm discharged the worker from her services.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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.

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.

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

Analysis

The worker was an employee according to common law. The information provided by both parties showed the worker did receive some instructions from the firm but was trained in her field. The worker relied upon the firm to resolve problems and complaints which showed a dependency upon the firm as an employer. Control was shown since the firm required the worker to attend staff meetings. The fact the firm required the worker to perform her services personally showed the firm was interested in the methods used as well as the end result as an employer. The firm had the financial investment as the firm provided the worker with an office, office equipment and supplies. The worker did not have a significant investment in the performance of her duties and the firm reimbursed the worker mileage which leans toward an employer-employee relationship. The worker was a landscape architect for the firm's landscape architectural business which showed the worker's services were integrated into the firm's daily operations. The worker's services did not significantly change from the time she was treated as an independent contractor to the time she was treated as an employee.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989