

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.222 AdministrativeAssist	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 operating an on-line resume building business operation. The firm engaged the worker through an application process to perform business administrative and other assigned services for the firm's business operation. The firm provided the worker with training on business policies and procedures. The firm assigned the worker services to perform and determined the methods to use in order to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker performed the services on a variable part-time flexible schedule basis mostly at the firm's home office and sometimes from the worker's home. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided a laptop, equipment, materials, and supplies needed by the worker to perform the services. The worker provided a laptop when working from home. The worker did not lease equipment or space. The worker did not incur any significant business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm's business. The worker did no advertising to the public as being engaged in a business. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. In this case the firm engaged the worker through an application process to perform administrative assistant services and other designated services for the firm's business operation. The firm provided the worker with training on the firm's business practices and procedures. The firm assigned the worker services to perform based on the firm's business needs. The firm determined the methods used by the worker to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm allowed the worker to perform services on a variable flexible schedule basis. The firm required the worker to perform the services personally mostly at the firm's home office and occasionally from the worker's home. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items when working from home. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business under the firm's business name mostly from the firm's home office on a regular continuous part-time flexible scheduled basis over several months. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.