

SS-8 Determination—Determination for Public Inspection

Occupation OFF02.241 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 firm is a personal trainer providing fitness training and selling merchandise on-line to customers. The firm engaged the worker to provide office management services for the firm's business operations. The firm allowed the worker to perform services on a flexible variable schedule. The firm required the worker to perform the services at the firm's home office or other designated locations. The firm assigned the worker services to perform orally. The firm and worker determined the methods used to perform the services. The worker stated that the firm was contacted for resolution of problems or complaints and the firm indicated not applicable to this issue during the working relationship. The firm did not require the worker to perform the services personally. Substitutes or helpers were hired and paid by the firm per the worker, the firm indicated the worker did not need the firm's prior approval to hire any substitutes or helpers and would not be reimbursed if any were paid by the worker.

The firm provided office, equipment, materials, and supplies per the worker. The firm indicated not applicable to what the firm provided. The worker did not lease equipment or space. The worker incurred personal auto and cell phone expenses per the worker and the firm did not reimburse any 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 and products sold.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The firm provided the worker with paid employee vacation, holiday, and personal day benefits per the worker. The firm indicated N/A to providing worker with benefits. Both the firm and the 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. In this case the firm engaged the worker to perform various office work services for the firm's personal training and sales of fitness products business operations. The firm verbally assigned the worker services to perform and both the firm and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm allowed the worker to perform the services on a flexible variable schedule at the firm's place of business and other designated locations. The worker personally performed the services. 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 on-going significant business 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 had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business operation. The firm provided the place of business, equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The firm paid the worker an hourly wage and the customers paid the firm for services and products sold. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operations. 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. The worker did not advertise as a business to the public. The worker personally performed services for the firm's business operations at the firm's place of business or other designated locations on a regular and continuous flexible schedule basis under the firm's business name over several years. Both the firm and the 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.