

SS-8 Determination—Determination for Public Inspection

Occupation 02PDP.12 PublishEditProducing	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 engaged the worker after performing the same services under an internship from August 2013 to April 2014 to perform part-time news desk writer services on weekends from home. The firm is engaged in the website posting business of [REDACTED] and theater reviews. The firm provided the worker with business policies and procedures training during the internship and discussed the job responsibilities when hired part-time. The firm assigned the worker job responsibilities and the worker received assignments through the firm's provided business system access. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to provide the firm with time reports. The firm allowed the worker to perform the services from home. The firm required the worker to perform the services personally. Per the worker the firm hired and paid substitutes or helpers, the firm indicated not applicable to hiring and paying substitutes or helpers.

The firm provided the worker with access to a posting site needed by the worker to perform the services. The worker provided a laptop. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage and nothing during the internship period. The customers paid the firm. The firm carried 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 firm indicated the worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's approval. The worker did no advertising as a business to the public. Both parties 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 worker had previously performed the same services under an internship program so the firm had provided the worker with the necessary training and instructions in order for the worker to perform the services part-time on weekends from home. The firm provided the worker with job responsibilities instructions and assignments. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with time reports. The firm required the worker to perform the services personally from home. These facts evidence behavioral control by the firm over the services performed by the worker. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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 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. In this case the worker provided a laptop and the firm provided access to the firm's business systems. The firm paid the worker an hourly wage and the firm was paid through customers. The firm determined the level of payment for the services and products sold. The worker did not incur any significant on-going business expenses. 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 being incurred 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 firm indicated the worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business on a regular and continuous basis over a period of several months both at the firm's place of business and then from home under the firm's business name.

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.