

SS-8 Determination—Determination for Public Inspection

Occupation

02PDP.14 PublishEditProducing

Determination:

Employee

Contractor

UILC

Third Party Communication:

None

Yes

Facts of Case

The firm is operating manuscript publication services to international customers who are non-native [REDACTED] speakers in various professional venues. The firm engaged the worker through an application process to provide technical review services in the worker's field of expertise on a flexible work relationship basis. The firm provided the worker with job training at the beginning of the work relationship through the firm's electronic business platform, manuals, and management. The firm assigned the worker jobs to perform based on the worker's provided availability. The firm and the worker determined the methods used to perform the services. The worker contacted the firm's designated management regarding any problems or complaints for resolution. The firm required the worker to provide the finished manuscripts to assigned management for review prior to designated deadlines. The firm allowed the worker to perform the services on a flexible schedule basis wherever the worker chose to perform the services. The firm allowed the worker to accept or decline jobs offered but once accepted the deadlines were required to be met. The firm indicated the worker was not required to perform the services personally and the worker indicated she was required to perform the services personally and was prohibited from hiring substitutes or helpers. The firm provided substitutes as needed in order to meet deadlines.

The firm provided the jobs, management, and programs used by the worker to perform the services. The worker provided personal items needed to perform the services. The worker did not lease equipment or space. The worker incurred expenses for personal items and use of the items. The firm did not reimburse any expenses. The firm paid the worker on a fee per project basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services which varied based on job assignments. The firm indicated the worker could suffer an economic loss and had a financial risk with regard to personal items provided, risk of losses or damages to personal items, and completion of job assignments by deadlines once worker committed to perform the services.

There was a signed independent contractor agreement between the firm and the worker. The contract addressed the services the parties promised to perform and provide, means used to assign jobs, acceptance or decline procedures, and meeting deadlines. The firm could amend or modify the services by notify the worker of any amendment or modification. The agreement addressed payment per project would be addressed in the description of the projects. No expenses would be reimbursed unless authorized by the firm's manager prior to incurring expenses. The agreement addressed confidentiality, ownership, and other issues. During the agreement and for 1 year after termination the worker could not without the firm's consent perform services on her own, as a director, employee, agent, consultant, member of a partnership, firm, company or other entity or as a investor of any class of any company or other business entity provide the same services performed for the firm. The firm did not know if the worker performed similar services for others and the worker indicated no similar services were performed for others. The firm stated the worker advertised as a freelance editor on social media and provided a posting and the worker indicated not advertising as a business to the public. Both parties agreed the work relationship could be terminated 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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm provided the worker with the necessary training in order to perform the services according the firm's business process and procedures through manuals, software, and management review. The firm allowed the worker to accept or decline job offers but once accepted the job controls were applicable to how and when the worker was required to perform the jobs. The worker performed the services at worker's determined locations and provided the firm with information of the number of hours of availability to perform the services. The worker contacted the firm's designated management regarding any problems or complaints for resolution. The firm required the worker to provide management with completed reports for review by or before designated deadlines prior to providing the finished products to the firm's customers. The worker performed the services personally once jobs were accepted unless the worker received the firm's prior approval to engage others per the Independent Contract agreement. The firm reassigned jobs to substitutes or helpers as needed based on deadlines being met and the firm paid them. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the jobs, work programs, business operation manuals, and management supervision. The worker provided personal equipment, internet access, and credentials in a specific field of study. The worker did not lease equipment or space. The worker incurred expenses for personal equipment and internet access. The firm only reimbursed pre-approved expenses per the work agreement. The firm paid the worker a fee based on the accepted projects and the customers paid the firm. The firm determined the level of payment for the services paid by the customers and paid to the worker for performing the services which varied based on the projects, meeting deadlines, and availability. 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 operation. These facts evidence financial control by the firm over the services performed by the worker. The issues of the frequency and time in performing services and possible damages to personal equipment used would not be considered having control over profit and loss in the performance of the services in a business operation.

There was a signed Independent Contractor agreement between the firm and the worker. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm did not know if the worker performed similar services for others or advertised as a business but provided a on-line resource showing worker to be a free lance editor with work history information on experience and credentials. The agreement prohibited the worker during the agreement and for 1 year after termination without the firm's consent to perform similar services on her own, as a director, employee, agent, consultant, member of a partnership, firm, company or other entity or as a investor of any class of any company or other business entity providing the same services performed for the firm. The firm referred to the worker as a subject matter expert performing technical editing services to the customers.

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.