

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA Instructor

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:**Facts of Case**

The firm is a 501(c)(6) organization that provides training and instructions to business members workers for certifications in various occupations in order to meet industry rules and regulations. The firm engages qualified instructors to provide the training and instructions to be certified workers. The worker was engaged through an application process to provide workers with training and instructions in various fields under the worker's SME qualifications. The firm sets up class schedules according to the member workers needs and worker's availability. The firm provides the curriculum used to provide instructions to worker's needing certification according to state rules and regulations, safety, and other job qualifications needed by the members businesses. The worker makes recommendations with regard to apprentice needs and determines the methods to use to perform the services. The firm requires the worker to contact the firm's designated director of apprenticeship regarding resolution of problems or complaints. The firm requires the worker to provide the firm with monthly invoices showing hours worked and services performed. The firm provides a training center to use a set number of hours per week for the apprenticeship program. The firm requires the worker to perform the services personally. The firm hires and pays substitutes or helpers. The worker is required to obtain the firm's prior approval to hire any substitutes or helpers and would not be reimbursed if he paid any.

The firm provides the curriculum, books, training guide, materials, supplies, and computer. The worker does not lease anything or incur any expenses that are not reimbursed by the firm. The worker is paid hourly wages based on the services performed. The firm does not allow drawing accounts. The firm is paid through it's members. The firm does not carry workers' compensation insurance. The worker determines the level of payment for services by submission of a job proposal and the firm agrees to the amounts paid to the worker to perform services. The worker can not suffer any economic loss and has no financial risk.

There are no contracts signed between the firm and worker. The firm indicates the worker does perform similar services for others and the worker indicates he does not perform similar services for others. Both parties agree the worker does no advertising as a business to the public. The firm refers to the worker as an independent contractor for the firm's business. Both parties may 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. 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 not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services being 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 significant financial investment in a business and did not incur any business expenses. The firm has the business investment and control over profit and risk of loss with regard to the services the worker performs for the firm's business. The firm pays the worker an hourly wage for services based on worker proposals and the firm is paid through it's members for providing the services to the members workforce. The worker can not suffer any economic loss due to on-going significant business capital investments being made. The worker does not have any financial risks with regard to the services being performed. These facts evidence financial control by the firm over the services being performed by the worker.

There are no contracts between the firm and the worker. The worker does not perform similar services for others or advertise as a business to the public. The worker has been performing services personally for the firm's member workers on a regular and continuous scheduled basis over several years under the firm's business name. Both the firm and the worker may 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.