

SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.20 Overseer

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a boat charter business operation. The firm engaged the worker through a referral to perform business and customer services for the firm's business operation. The worker had business experience in this line of work so only safety training was provided. The firm established schedules for trips and allowed the worker to select trips to work on a first come/first served basis. 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 daily manifest reports and weekly time reports on services performed. The worker performed the services personally on the boat and other designated locations determined by the firm. The worker attended safety meetings and drills. The firm hired and paid substitutes or helpers.

The firm provided the boat, tours, and food, The worker provided a personal vehicle for shopping and commuting. The worker did not lease equipment or space. The worker did not incur any significant business expenses. The firm did not reimburse any expenses. The firm paid the worker on a per trip basis for services performed on the boat and hourly wage for shopping. The customers paid the firm. The firm did not carry workers' compensation insurance. The worker's economic loss and financial risk were related to cancelled trips the worker was scheduled to work.

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 firm did not prohibit the worker from doing so. The worker did no advertising to the public as being engaged in a business while performing services for the firm. 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. In this case the worker had experience so no formal training was provided by the firm. The firm determined the schedules and made them available to worker to select desired trips to work. 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 required the worker to contact the firm for resolution to problems or complaints. The worker's daily routines varied based on trip departing dates and times established by the firm which could be cancelled by the firm and/or firm's customers. The firm required the worker to perform the services at the firm's boat location or other designated places based on jobs needed to be performed. Once the worker chose jobs to work, the worker performed the services personally. The firm hired and paid substitutes or helpers. 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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business when performing services for the firm and did not incur any on-going significant business expenses. The firm paid the worker on a per trip basis and hourly wage and the customers paid the firm. The firm determined the level of payment for the services offered to the firm's customers and paid to the worker. 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 profit and loss with regard to the services performed for the firm's business operation. The risk of jobs being cancelled that the worker committed to perform would not be considered having control by the worker over profit and loss in a 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 firm indicated the worker did perform similar services for others and was not required to obtain the firm's approval. 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 while performing services for the firm's business. The worker personally performed services for the firm's business at the firm's place of business on a regular and continuous variable scheduled basis under the firm's business name over a period of 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.