

## SS-8 Determination—Determination for Public Inspection

Occupation

04FSC.40 Overseer

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

### Facts of Case

The worker initiated the request for a determination of her work status as a clubhouse director in tax years January 2011 through tax year 2017. The firm's business is described as homeowners association with a recreation facility.

The firm's response was signed by the president. The firm's business is described as a homeowners association. The worker performs services as a clubhouse director, (she is) responsible for putting on events in the community clubhouse.

According to the firm, the worker is not provided with training or instructions; the worker is to put on a set amount of shows. The methods to be used by the worker are by the firm's president. If the worker encounters any problems or complaints she is required to contact the firm's president for resolution. In this position, the worker is required to submit a report of the summary of the costs of an event. The worker puts in approximately 30 hours per week, sometimes more, sometimes less at the association's clubhouse. The worker is required to provide the services personally. The worker concurs that she is not given specific training and instructions since she had been previously employed in the same position. She indicated that the job assignments come from the firm's board of directors and property manager and agrees that any problems or complaints are directed to the firm for resolution. Her hours of service are generally from 9 a.m. to 5 pm Monday, Tuesday, Thursday, and Friday. The worker was required to perform the services personally and any additional personnel are hired and paid by the firm.

Both parties concur the firm provides the venue and all necessary equipment and supplies. The worker furnishes nothing and does not incur expenses in the performance of the job. The firm and worker acknowledge the worker is paid an hourly wage and that she is not at risk for a financial loss in this work relationship. The firm establishes the level of payment for services provided. The firm responded that the worker is covered under the firm's workers' compensation insurance policy.

The firm indicated there are no benefits extended to the worker; however, the worker provided copies of pay stubs that reflect paid vacation and paid sick pay and time sheets. Either party could terminate the work relationship without incurring a liability or penalty. The firm responded the worker is performing same or similar services for others during the same time frame; the worker disagrees.

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## Analysis

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A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties in this work relationship. In this case, the firm retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations are met. The worker is not operating a separate and distinct business; the worker does not have an investment capital or assume business risks, and therefore, she does not have the opportunity to realize a profit or incur a loss as a result of the services provided. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the business. In this case, the worker is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

## CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.