

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.41 Overseer	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 is a internet marketing and technology publishing and development business. The firm engaged the worker through the purchase of the worker's prior employer's business to perform customer websites directory listing services through the firm's sites portfolio programs. The worker was experienced so the firm provided no formal training. The firm assigned jobs through a firm provided database and allowed the worker to select jobs to perform. The firm and worker determined the methods used to perform the services. The worker contacted the firm or other firm designated individuals regarding any problems or complaints the worker was not able to resolve for resolution. The worker provided the firm with biweekly time and work reports. The worker performed the services on a flexible schedule from home. The firm indicated the worker was not required to perform the services personally or obtain the firm's prior approval to hire substitutes or helpers and the worker would pay them and not be reimbursed for any payments. The worker indicated being required to perform the services personally and the firm hired and paid substitutes or helpers if needed.

The firm provided the business programs, customers, and support. The worker provided experience and home office equipment. The worker did not lease equipment or space. The worker incurred home office expenses and was not reimbursed by the firm for any expenses. The firm paid the worker an hourly wage and the customers paid the firm for the services. The firm did not carry 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 was a signed consulting agreement indicating the worker to be an independent contractor. The agreement addressed the job, payment for services, confidentiality, ownership, conflicting obligations and other work relationship issues. The worker was paid for holidays per invoices provided. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker was represented to the customers 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.

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 firm engaged the worker through the purchase of the worker's former employer's business to perform the same services as had been performed from home. 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. The firm provided the worker with the necessary programs in order to perform the services remotely and allowed the worker to work on a flexible schedule determined by the worker. No formal training was provided by the firm due to the worker's qualifications and experience. The firm allowed the worker to choose assignments provided by the firm based on the firm's business needs. The firm provided the worker with internal contacts regarding resolution of any problems or complaints the worker was not available to resolve. The firm required the worker to submit biweekly hour and job reports on the services performed. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the business, jobs, remote connection programs, tools and reimbursed all pre-approved expenses incurred by the worker. The worker provided home office equipment and supplies. The worker did not lease equipment or space. The worker did not incur any significant business expenses. The firm paid the worker an hourly wage and the customers paid the firm for the services. The firm determined the level of payment for the services. 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.

There was a signed consulting agreement between the firm and the worker indicating the worker to be an independent contractor and addressing the working relationship issues. 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 oral or written. Documentation provided indicated the worker received paid holiday benefits. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous flexible schedule basis over 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.