

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.46 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 organization is a corporation operating a non-profit youth soccer organization. The organization engaged the worker as Director of Coaching. There was a written agreement between the two parties. The worker filled out an application for the position.

The worker did not receive any training as he was already experienced in his field and had already acquired a coaching license. The worker stated the board gave the worker his assignments and the organization stated were established between the organization and the worker. The firm stated the organization determined how the assignments should be performed and the organization stated the worker determined how he should perform assignments. The worker ultimately relied upon the organization to resolve his problems and complaints. The organization stated the worker was required to report his activities and the worker stated he was required to provide coach evaluations. The worker stated he had a regular schedule from 4:30 to 9:00 p.m. The worker performed his services on the soccer field and from his residence. The worker was required to attend monthly board meetings. The worker was required to perform the services personally.

The organization provided him with a computer, cell phone, uniforms, goals, soccer balls, and cones. The worker did not lease any space to perform the services. The organization reimbursed the worker for any work related expenses. The worker was paid on a salary basis. The customers paid the organization directly. The organization established the level of payment for the services provided.

The organization stated the worker was provided personal days and the worker stated he was supposed to receive vacation pay but never did receive it. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time they performed services for the firm. The worker was not part of a union. The worker stated he was represented as the Director of Coaching and the organization stated the worker was referred to as their representative. The organization terminated the worker's services.

The two parties entered into an employment agreement that outlined the worker's wages, work responsibilities, and professional expectations of the position. The worker was required to mold the vision, philosophy and culture of the organization, develop, promote, and support a club wide player development program and establish, implement, and support club wide coaching guidelines & training curriculum. The agreement also included the expectation for the worker to educate, mentor, and evaluate coaches and support the entire organization coaching staff, coordinate coaching & training activities, attract players to the organization, support licensing and education of coaching staff and promote players for placement in college and/or professional clubs. The agreement also stated the worker was to continually develop and assess short and long term goals for players, write an age specific coaching curriculum for each coach, provide a General Season time line with training topics, conduct three coaching clinics, conduct coaching meeting according to age groups, evaluate all coaches biannually, develop and implement a complete player development program, schedule and implement advanced training for players competing or wanting to compete at a higher level, interview and recommend to the organization coaches, attend and direct tryouts, attend and assist with mini-season tryouts, oversee and assist team formation. The worker was responsible for organizing and directing a total of six specific programs over the course of one calendar year.

The worker would receive an annual sum of \$55,000 per calendar year, be reimbursed business related travel outside of the district if pre-approved, the organization would provide a laptop computer, cell phone & cell phone service, and would provide an annual budget for equipment. The worker could not compete within a 30 mile radius

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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. In the instant case the worker's duties were outlined for him in the agreement. 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.

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 owner of the business. In the instant case the worker was the organization's director of coaching for the organization's coaches which demonstrated the worker's services were integrated into the firm's daily operations.

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. Financial control by the organization setting the worker's annual salary.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. In the instant case the organization did provide the worker with the supplies and equipment he needed to perform his services and reimbursed the worker for work related expenses as an employer.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. In the instant case the worker was provided by the organization with everything he needed to perform his services.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. In the instant case the organization did discharge the worker's services as an employer.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989