

**SS-8 Determination—Determination for Public Inspection**

Occupation

04MAN.47 Manager

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a night club and entertainment provider business. The firm engaged the worker through a referral to originally perform entertainment marketing services and then subsequently business management services for the firm's business operation. The worker was experienced in performing business management and marketing services in his own business operation so no formal training was needed. The firm assigned the worker jobs to perform in addition to the marketing agreement services based on the firm's business needs and desired results. The firm and the worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for final resolution and to resolve the problems as directed. The firm required the worker to provide the firm with invoices for services biweekly. The firm allowed the worker to perform the services on a flexible schedule as long as the firm's business needs were met. The firm required the worker to perform the services personally at the firm's place of business. The worker attended meetings but per the firm was not required to do so. The firm and worker hired substitutes or helpers and the firm paid them.

The firm provided the business, equipment, materials, and supplies. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm reimbursed all documented business expenses requested by worker through invoices. The firm paid the worker a weekly salary which increased during the working relationship. The customers paid the firm. The firm determined the level of payment for the services and products sold. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There was a signed Independent Contractor agreement beginning in December of 2012 for marketing study services to increase the firm's revenue. It addressed other business related jobs to be performed and required the worker to fulfill any other duties reasonably requested by the firm and agreed too by the worker. The agreement was in effect through January 30 or earlier and could be extended through mutual agreement. The agreement indicated the worker would be paid a set amount per week on a bimonthly basis. The firm indicated the worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others while performing services for the firm. The worker did no advertising as a marketing business to the public but did have a business interest in another business in a different location. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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## Analysis

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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, an experienced business person, through a referral to perform marketing and business management services for the firm's business. The firm assigned the worker services to perform and allowed the worker to perform the services on a flexible schedule basis. The firm and worker determined the methods used by the worker 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 regarding any problems or complaints for final resolution and to resolve the problems accordingly. The firm required the worker to perform the services personally at the firm's place of business. The firm and worker hired substitutes or helpers and the firm paid them. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the business, equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm reimbursed all business expenses. The firm paid the worker a salary on biweekly basis and increased the salary during the working relationship. The customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss due to significant on going 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. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed Independent Contractor Agreement between the firm and the worker indicating the various job expectations, addressing work related issues, and payment for services which could be modified under mutual verbal agreements. 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. The firm indicated the worker did perform similar services for others while performing services for the firm and did not need the firm's prior approval to do so. The worker was associated with a business in a different area. 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 related to the services performed for the firm's business operation. The worker personally performed services for the firm's business on a regular and continuous flexible schedule basis at the firm's place of business under the firm's business name over a period of about 1 year.

Both parties 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.