

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE Instructors/Teachers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is a physical fitness training and coaching business. The firm originally engaged the worker to perform front desk services until certified and then the worker began performing coaching services. The firm paid the worker as an employee for the front desk and coaching services and then as an independent contractor for coaching and personal training services. The firm provided the worker with job shadowing opportunities and occasionally provided suggestions on how to perform the services. The firm posted job opportunities on a calendar and allowed the worker to perform services on a flexible schedule as needed and available. The firm and worker determined the methods used to perform the services. The firm and worker resolved problems or complaints. The firm paid the worker on a per job basis. The worker performed the services at the firm's place of business. The firm required the worker to perform the services personally. The worker was required to make arrangements with other worker's regarding substitutes or helpers issues.

The firm provided the equipment, materials, and supplies. The worker provided a certificate, did not lease space or equipment or incur any significant on-going business expenses. The worker incurred personal item related expenses. The firm paid the worker based on the services performed and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The worker did not perform similar services for others. The worker could advertise per the firm and the worker indicated not advertising as a business to the public. The firm referred to the worker as a contractor of the firms' business to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the worker's services for not showing up to a scheduled class designated as the worker's responsibility.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no significant financial business investments and no control over profit and loss due to significant business capital outlays being made. 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. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The fact that the worker could perform services on a flexible schedule basis would not be considered as having control over the cost related to the profit and loss of running a business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no written contracts between the firm and the worker. The worker did not perform similar services for others. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business operation at the firm's place of business on a regular and continuous part-time flexible scheduled basis over several years under the firm's business name.

Both the firm and the worker retained the right to terminate the workers services 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.

The firm paid the worker as both an employee for a desk job and then licensed coaching services and Independent Contractor for coaching and personal training services during the working relationship. Other than time requirements the services remained substantially the same. Based on the autonomy of the working relationship we have determined the worker to have been an employee under common law for the entire working relationship.