

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE Teacher	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 operating a educational enrichment center and engaged the worker to develop training materials and prepare a curriculum for registration, billing, customer support, and teaching classes. The worker performed services on a flexible schedule for some services and at the customers convenience for some services. The firm provided the worker with introduction to firm's business, courses, inventory and how to use software for customer relations. The firm assigned jobs through e-mail, phone, and in person to the worker. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to submit time reports. The worker's schedules were flexible based on jobs being performed. The worker performed services at the firm's place of business and from home. The firm required the worker to attend meetings. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided all the equipment, material, and supplies. The worker did not lease anything or incur any business expenses. The firm reimbursed business expenses incurred by the worker. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for the products and services.

There were no contracts provided between the firm and worker. The firm did not provide the worker with any paid benefits. The worker did perform similar services for others and was not required to obtain the firm's prior approval per the firm and the worker indicated no to this issue. The firm stated the worker advertised for the firm via marketing e-mails. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

The worker solicited new customers by responding to potential inquiries provided by the firm. The worker provided excel spreadsheet update reports on the leads. The firm determined the terms and conditions of costs for the products and services and cancellations. The worker sold products and services from home and from firm's place of business.

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. These facts evidence behavioral control by the firm over the services performed by the worker.

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 financial business investments and no control over profit and loss due to significant business capital outlays being made. 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 firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no formal contracts provided between the firm and worker. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. 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 advertised the firm's business and did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business at the firm's place of business and from home on a regular flexible scheduled basis under the firm's business name over a period of several months.

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.

Based on the autonomy of the working relationship we have determined the worker to have been an employee under common law.