

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE Instructors/Teachers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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 non-profit organization providing STEM (science, technology, engineering, and math) education to at-risk youth in a designated area of the State. The firm engaged the worker through a contract in 2017 to perform instructor services in STEM programs as a leader or an assistant instructor. The firm provided basic training, curriculum, and lesson plans to follow by the worker in performance of the services. The firm assigned services based on the worker's skill set, interest, and business needs. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm or designated staff regarding problems or complaints for resolution. The firm required the worker to complete and provide various firm provided reports related to the services performed. The firm required the worker to perform the services during firm established schedules at the firm's location and customer locations. The firm required the worker to attend instructor meetings. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the business, students, equipment, materials and supplies needed by the worker to perform the assigned services. The worker provided credentials and transportation. The other parties provided equipment and space. The worker did not lease anything or incur any business expenses. The firm reimbursed all teaching and educational related expenses. The firm paid the worker an hourly wage and the firm was paid through customer resources. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The worker did not determine the level of payment for the services. The firm and service recipient determined the level of payment for products and services.

There was a signed independent contractor agreement between the firm and the worker that addressed the services, worker's status, term, schedules, compensation, termination, insurance requirement, confidentiality and proprietary issues and other issues. The firm indicated unknown to worker performing similar services for others while performing services for the firm. The worker indicated no similar services were performed for others while performing services for the firm. The firm and worker indicated the worker did no advertising as a business to the public. The firm represented the worker as an instructor under the firm's name to the customers. Both parties 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. 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 firm was paid through the customer resources. The worker did not determine the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk with regard to the performance of the services. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor agreement entered into between the firm and the worker that addressed the working relationship and worker's status to be an independent contractor in performance of the services. 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 worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business under the firm's business name to the firm's customers on a regular and continuous part-time as needed and scheduled basis.

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.

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