

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.5Instructor/Teacher	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 firm is in the business of [REDACTED]. The worker provided his services to the firm in 2011 through 2013 as a martial arts instructor teaching martial arts, assisted with publicity events, conducted belt testing procedures, opened and closed the academy on certain days and received the Form 1099-MISC in 2012 for these services.

The firm stated that the worker was given bi-monthly instructor seminars, trained as a black belt student, would assist classes, and the worker determined the methods by which the assignments were performed. The worker stated that there were no assignments but he was required to report only on certain days and hours, and the firm was in complete control. Both parties agree that if problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm indicated that the worker was required to send an e-mail with the number of attendees in the class. The worker's schedule varied, but his routine was consistent; he was required to report to work 30 minutes before the scheduled class he taught, unlock and prepare academy for the class, teach the class, process the paperwork, sell supplies, wait until the last student left, set the alarm and lock up the firm's academy. He provided his services personally on the firms' premises 100% of the time. The worker maintains that the firm required him to attend belt testings, promotional events, and instructor meetings, and the penalty for not attending was losing his job. The firm contends that there were bi-monthly instructor classes and no penalty for not attending. If additional help was required, the firm hired and compensated the helpers.

The firm provided all the necessary supplies and equipment such as; the facility, bags, targets, tools, belts, uniforms, and pads that the worker needed to provide his services. The firm added that the worker supplied the lesson plan for class. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. He was paid per class for his services. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm established the level of payment for the services the worker provided.

The worker did not perform similar services to others during the same time period. In fact, the worker stated that the firm verbally told him he could not perform services for anyone else. He provided his services under the firm's business name. Additionally, the worker reported that he had to purchase employers' branded uniforms to teach in. Both parties retained the right to terminate the relationship without incurring liability. The relationship ended when the worker quit.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

There was a written contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties. See also Section 31.3121(d)-1(a)(3) of the Employment Tax Regulation.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of his services. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. 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.

The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The worker had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. 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. He was paid per class for his services. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. 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. Either the firm or the worker could terminate the agreement.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.