

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.45 Instructor/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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a fitness studio specializing in boot camp and group fitness classes and the worker was engaged to teach four (4) boot camp sessions per week plus three (3) ab sessions. The firm states all of their boot camp instructors are hired as independent contractors and everyone signs an agreement stating that they understand this.

The firm states all boot camp instructors are required to take at least one week of sessions to experience what their program is about. The firm states it is required that all instructors are certified as personal trainers or as boot camp trainers. The worker received her assignments from the firm's private Facebook page. This page was set up for communication between the firm and all trainers regarding daily workouts, concerns with clients, and work coverage if needed. The firm states they determined how the worker performed her services and the worker was required to notify them if any problems or complaints arose for their resolution. The worker was required to text the firm's owner with any notes, issues, concerns, and attendance after each session. The worker was required to personally perform her services Mondays, Wednesdays and Fridays from 12 p.m. to 12:30 p.m. and at 12:40 to 1 p.m. for the firm's abs session. The worker also taught from 8:30 a.m. to 9:15 a.m. on Mondays and at noon on Thursdays towards the end of the work relationship. The worker performed her services at the firm's locations. They firm occasionally had staff meetings but the worker was not required to attend these meetings. The firm states it was the worker's responsibility to find a replacement if she was unable to perform services but they states the worker was required to choose a replacement from within their own staff; a replacement from the outside was not allowed.

The firm provided the studio space, workout equipment, music, and boot camp shirts to the worker in order to perform her services. The worker provided workout shoes and transportation to and from the firm's studio which the firm did not reimburse the worker for. The clients paid the firm for services rendered by the worker and the firm paid the worker on a per session basis. The firm established the level of payment for the services provided. The worker did not have an opportunity to incur a loss as a result of her services. The firm did not withhold employment taxes from the worker's earnings.

The worker did not perform similar services for others and she did not advertise her services. The firm states the worker was not allowed to work at any other boot camp facility while working for them. The firm states the worker was encouraged, however, to build her own personal training business. The firm states they represented the worker too their clients as an independent contractor hired as a boot camp instructor. Either party could terminate the work relationship at any time without either party incurring a liability.

The firm states the worker was encouraged to share their program with friends and family but it was not required of the worker to solicit new clients.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm determined and provided the worker with her assignments and they determined how she performed her services. The worker provided her services on behalf of and under the firm's business name rather than an entity of her own. The firm determined what classes would be offered to their clients and who would teach the classes. The clients paid the firm for services rendered by the worker. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. While the worker provided her own workout clothing and incurred transportation expenses to and from the firm's premises, this is not considered a significant investment. 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. In this investigation, we looked at whether the worker displayed characteristics of an independent contractor; such as the outpouring of money into a business offering those services to the public and the opportunity to incur a loss or realize a profit as a result of her services. The worker in this case did not have this. She did not lease a space from the firm, she did not determine the class she would teach, she did not receive funds from clients, and she did not have a business license or business registration in the state where she performed her services.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.