

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.58 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

Facts of Case

The firm is a gym offering exercise training classes and personal training services to customers. The firm engaged the worker through verbal recommendation to conduct classes and perform personal training to customers. No formal training was needed due to worker's prior experience and certification. The worker received verbal assignments from firm customers and the firm. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints. The worker performed the services on a flexible schedule based on the worker's availability and firm scheduled classes/personal training sessions. The firm required the worker to perform the services personally at the firm's place of business.

The firm provided all equipment needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker on a per class or per client basis and the customers paid the firm directly or indirectly through the worker. The firm established the level of payment for the services based on experience and qualifications. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm did not know if the worker performed similar services for others or advertised as a business to the public. The firm's prior approval was not required for worker to do this. The worker stated she did not perform similar services for others while performing services for the firm and did no advertising. 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. In this case you engaged the worker who had prior experience to perform coaching and personal training services for your business operation. You assigned the worker services to perform based on the worker's availability. You and the worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. You required the worker to contact you regarding problems or complaints for resolution. You required the worker to perform the services personally at your place of business once jobs were accepted. These facts evidence behavioral control by you over the services performed by the worker. The services the worker performed were both directly related to your business operation and integral to your business. When a firm engages workers to perform services for the firm's business then it is both necessary and integral to the firm's business reputation and investment that the firm retains control over the services being performed. You ultimately retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your business reputation and financial investment.

You provided the place of business, equipment and customers. The worker did not lease equipment or space. The worker did not incur any business expenses. You paid the worker on a per class or per customer basis and your customers paid you directly or indirectly through the worker. You established the level of payment for the classes and services the worker performed for your business. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses with regard to the services performed for your business operation. These facts evidence financial control by you over the services performed by the worker.

There were no contracts between you and the worker. You indicated there was a verbal working agreement. 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. You did not know if the worker performed similar services for others while performing services for your business and did not required the worker to obtain your 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. You did not know if the worker advertised as a business to the public. The worker indicated she did no advertising.

Both you 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.