

SS-8 Determination—Determination for Public Inspection

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| Occupation 05ITE.68 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 operating a yoga studio. The firm engaged the worker to provide instructor services for the firm's customers. The firm assigned the worker schedules to work based on the worker's availability. The worker was certified so no formal training was provided by the firm. The firm provided instructions on the business policies and procedures. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to attend meetings as determined needed by the firm. The firm required the worker to perform the services personally at the firm's place of business once committed. The firm hired and paid substitutes or helpers if needed.

The firm provided everything needed by the worker to perform the services. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any on-going business expenses. The firm paid the worker a set amount per class taught and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. 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 while performing services for the firm and the worker indicated no similar services were performed for others. Both agreed the worker did no advertising as a business to the public. The firm referred to the worker as a contractor under the firm's business name. Both the firm and the worker 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. The issue that the firm allowed the worker to perform services on a variable flexible schedule is irrelevant. Once the worker committed to working a schedule the worker was required to abide by the firm's policies and procedures in performing the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed. The issue that the instructor certification determined the methods used by the worker to perform the services would not in itself make the worker to be an independent contractor. The firm controlled the items made available for use by the customers to partake in the lessons. 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.

The firm provided everything needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any on-going business expenses. The firm paid the worker a set amount per class and the customers paid the firm. The firm determined the level of payment for the products and services. 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 any risk of loss with regard to performance of the services for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. 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 at the firm's place of business on a continuous as available and agreed basis over several years. 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.