

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE.71 Instructor/Trainer

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is in the business of operating a franchise that offers painting classes and parties. The worker was an artist and was engaged to teach art classes. She received Forms 1099 for her services in 2013 through 2015; she continued to provide her services in 2016 as well. There was no written agreement.

Both the firm and the worker agreed that the firm provided training as well as instructions regarding how the class was to be conducted, the set-up for the class and the clean-up. During her class instruction, the worker had the option of mentioning information about upcoming classes. Private parties had a contract with the firm. The worker worked at two of the firm's locations where she taught painting classes at the firm's studio. The firm gave the worker her scheduled work assignments based on her availability as it was the firm that booked the parties and evening classes. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose ; however, the firm noted that the worker also determined the methods and resolved issues. The firm mentioned that there were reports regarding the number of customers served. The worker worked weekdays and usually had a class in the evenings; the weekend schedule varied. Both parties agreed that the worker provided her services at the firm's locations. There were staff meetings. Both parties also agreed that the worker was required to provide the services personally with the firm hiring and paying any substitutes.

Both the firm and the worker agreed that the firm provided all the art supplies as well as a uniform. Both parties also agreed that the worker was paid per class and had no other economic risk. The customer paid the firm and the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits; the worker did mention bonuses. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship has ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

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 retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the worker with training whether locally or through its franchise arrangements, regarding classroom parameters and procedures. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The firm booked the classes/parties and scheduled the worker to teach based upon her availability. While 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. Once the worker was scheduled to teach a class, she was expected to adhere to the time and day. Other elements of control would be working at the firm's location on a continuous basis. 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.

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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. It was the firm that had the investment in the franchise, provided the facility and incurred the associated expenses. The worker was paid per class taught and had no other economic risk other than the loss of that compensation.

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. There were no benefits and there was no written agreement. The worker was engaged to teach art classes at the firm's business location. When doing so, the worker was not engaged in an independent enterprise. Her services instead were part of the necessary activities of the firm's business operations. 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.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.