

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE.73 Instructor/Teacher

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is a single member limited liability company in the business of operating a training facility. The firm engaged the worker as a physical trainer. There was no written agreement between the two parties.

The worker stated the firm told him what facility to work at and which client to handle. The firm stated the firm gave no instructions. The firm stated the worker got his assignments from a schedule and the worker stated the firm determined the assignments. The firm determined how the assignments should be performed. The worker relied upon the firm to resolve problems and complaints. The worker was required to submit timesheets and at what location he performed his services. The firm set the worker's schedule according to the sport season. The worker provided his services at the firm's location. The firm stated the worker was required to perform his services personally. The worker stated he was required to attend an occasional staff meeting.

The firm provided the location, equipment and supplies for the worker to perform his services. The worker did not lease any space to perform the services. The worker was reimbursed out-of-pocket expenses. The worker stated he was paid on a salary basis and the firm stated he was paid hourly. The clients paid the firm for the services they received. The worker stated the firm established the level of payment and the firm stated it was a negotiated amount.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The firm stated the worker performed similar services for others by the worker stated he did not perform similar services for others. The worker stated he was represented as an employee, Lead Strength and Conditioning Coach for the firm. The firm stated they represented the firm as an athletic trainer. The worker stated the relationship ends when the worker quits or is fired and the firm stated the worker stopped showing up for work and that was how the relationship ended.

The worker provided copies of pay checks in the same amount each week and copies of checks to him for reimbursement of supplies he bought for the business.

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.

If you are the sole member of the LLC and you have not made any election for treatment as a corporation, then the LLC is disregarded as an entity separate from you, the owner, for payments made prior to January 1, 2009. This means the business is essentially treated as your sole proprietorship, and you are responsible for the employment taxes. If you chose to pay your worker(s) under the LLC name and identification number, you have the option of filing the employment tax returns in this manner and IRS will process them. However, filing a return using the name and identification number of the disregarded entity does not make it liable for tax, even when the liability is the result of the business activities of the LLC entity. The disregarded status of your LLC means that you the owner, not the LLC, are legally liable for employment taxes, and you are the employer of any employees engaged in the business activities of your LLC. If the payments to the worker(s) were made after January 1, 2009, the LLC is responsible for the employment taxes.

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.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker was an employee according to common law. The information provided by both parties show the firm did control the worker by instructing the worker which location to go to and what services to perform. The worker showed a dependency upon the firm as an employer to resolve his problems and complaints. The fact the worker was required to perform his services personally showed the firm was interested in the methods used as well as the end result. The firm required the worker to submit timesheets which demonstrated control over the worker's services. The worker did not have a financial investment as operating his own business as the firm provided the location, equipment and supplies the worker needed to provide his services. The firm was the party that could suffer a loss due to lack of payment as the firm was responsible to collect the amount they charged to the customers. The worker performed services as a trainer for the firm's training facility which demonstrated the worker's services were integrated into the firm's daily operations.

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 go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989