

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE.77 Instructor/Teacher

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm is operating a physical fitness business. The firm engaged the worker through a college internship to provide instructions/training services to the firm's members. The firm provided workout plans for the firm's customers and provided them to the worker. The firm determined the class schedules and allowed the worker to perform the services on a flexible as available scheduled basis. The firm and worker determined the methods used to perform the services. The worker contacted the firm regarding any problems or complaints the worker was not able to resolve for resolution. The firm required the worker to perform the services personally once committed at the firm's place of business. The firm hired and paid substitutes or helpers as needed.

The firm provided the place of business, members, equipment, and materials needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage and the members paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the memberships and services offered. The worker could not suffer any economic loss and had no financial risk.

The firm indicated there was a signed contract but none were provided. The worker indicated there were no contracts. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker did no advertising as being engaged in a business to the public. 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 the firm engaged the worker a college student to perform physical fitness training/instructions to the firm's members in groups or individually. The firm assessed the members desires/needs and developed workout plans which were provided to the worker when jobs were committed too by the worker to perform for the firm's members. The firm allotted schedules to the worker to conduct group or personal training and allowed the worker to accept or decline schedules based on the worker's availability. The firm and 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. The firm required the worker to perform the services personally at the firm's place of business once jobs were accepted by the worker. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment in the place of business, equipment, and materials and control over profit and risk of loss with regard to the services the worker performed for the firm's business operation. The firm paid the worker an hourly wage and the members paid the firm. The firm determined the level of payment for the memberships offered and the services performed for the members. 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 being incurred with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

The firm indicated there was a written independent contractor agreement between the firm and worker but it was provided. 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. The firm stated the worker did perform similar services for others and was not required to obtain the firm's 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. In this working relationship the worker personally performed services for the firm's business under the firm's business name at the firm's place of business for the firm's members on a flexible as available scheduled basis over a period of several months. The worker did not advertise as a business to the public.

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.