

**SS-8 Determination—Determination for Public Inspection**

## Occupation

05ITE.81 Instructor/Teacher

## Determination:

☒ Employee☐ Contractor

## UILC

## Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a non-profit organization providing fitness and nutrition coaching to low income women. The worker was engaged as a fitness coach who facilitated personal and group fitness classes as well as prepared paperwork associated with tracking client progress. She received a Form 1099-MISC for her services in 2014 and 2015.

Both the firm and the worker agreed that the worker received an overview of nutrition principles to be taught as well as the class agendas. The worker received her work assignments from the firm who noted that the workouts/classes themselves were on a set schedule. Other tasks needing completion by the worker were not on a rigid time line. Both parties agreed that the firm determined the methods by which the assignments were performed though the firm noted that the worker had freedom regarding style and presentation of its principles and agenda. Both parties agreed that the firm would be contacted if any problems or issues arose. There were required reports to submit such as a weekly log explaining the task completed and the time needed to do so; the worker noted that she turned in information regarding the coaching of clients. The worker's routine consisted of working for another entity in the morning at the firm's shared facility. During midday, she completed the food journal grading or other work for the non-profit; then, she would teach other fitness classes and lastly, teach the set scheduled classes for the firm. The worker added that at one point she had to punch a time clock. The firm agreed that the worker needed to work the set scheduled fitness classes, but could do the other work wherever she wanted to such as at her home or coffee shop. The worker, however, noted that she only worked on-site and indicated that there were mandatory staff and owner meetings. Both parties agreed that the worker was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided the facility, equipment, computer, meeting rooms, office supplies, and all supplies needed for teaching. The worker was paid by the hour or salary or other as she noted that her contract changed several times. The firm noted a set hourly rate with the worker having no other economic risk. The worker did not establish the level of payment for services; the firm did and based it on industry-wide standards.

The worker again noted that the terms of the contract had changed but some off days and vacation days were included. Only the firm indicated that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker noted that a non-compete clause existed for the related entity and that both jobs were presented together as a full-time package. The worker did perform similar services for others according to the firm. The worker noted that she was to help recruit and get people to participate in the non-profit. The firm noted that the worker provided services under the its name. The relationship ended when the worker quit.

## 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 mission and goals. The worker was a licensed and experienced personal trainer requiring no training. However, the firm provided the worker with specific instructions regarding nutrition principles to be taught and the class agendas. She performed her services according to the firm's scheduled class hours and days. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The firm had also indicated that other parts of the worker's job could be performed at any time and place chosen by the worker. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

The worker also provided her services on a continuous basis throughout the time period involved. 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. The firm provided the facility, equipment and supplies needed by the worker to do her assigned tasks. She simply received an hourly rate of pay and had no other economic risk. 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.

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 was some disagreement over whether there were any benefits. There was a written agreement; however, the firm's belief that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

While the worker may have provided similar services (fitness classes) for others, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. If a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed. Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite the absence of direct control (such as direct supervision), it cannot be doubted that many professionals are employees. In this case, the worker was an instructor for fitness classes at the firm's place of business. When teaching or performing other services associated with those classes, she was not engaged in an independent enterprise, but rather her services were part of the necessary activities of the firm's operations, that is, providing low-income women with nutrition and fitness guidance. 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.