

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.83 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 a 501(c)(3) exempt organization in the rowing sport promotion business for a high school. The firm engaged the worker to provide coaching assistant services for the firm's team coaches at practices and regattas. The firm's team coaches provided the worker with the necessary instructions on what services to perform. The coaches assigned worker services to perform and schedules needed to be covered. The firm and coaches determined the methods used by the worker to perform the services. The firm required the worker to contact the coach or a firm member regarding problems or complaints for resolution. The firm and coaches determined the work schedule. The firm required the worker to perform the services personally at firm designated locations. The firm required the worker to attend meetings as needed.

The firm provided all the equipment. The worker did not lease equipment or space. The worker incurred travel expenses to regattas. The firm reimbursed expenses one time per year. The firm paid the worker a weekly salary 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 worker did not perform similar services for others. The worker did no advertising as 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 to provide assistant coaching services for a member's high school team coach. The designated coach provided the worker with job instructions and assigned the worker work schedules. The firm and coach determined the methods used by the worker 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 contact the coach or a firm member regarding problems or complaints for resolution. The firm and coach determined the schedules the worker was required to perform the services and where the worker performed the services. The firm required the worker to attend meetings as needed. The firm required the worker to perform the services personally. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant 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 business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided all the equipment needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any significant business expenses. The firm reimbursed expenses once per year. The firm paid the worker a weekly salary and the customers paid the firm. The firm determined the level of payment paid by the customers and paid to the worker for providing the services. The worker could not suffer any economic loss and had no financial risk 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 while performing services for the firm's business. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm's business under the firm's business name at the firm's place of business or other designated locations on a regular and continuous part-time basis over several months. 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.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare). Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.