
SS-8 Determination—Determination for Public Inspection

Occupation

ITE - Instructors / Teachers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:**Facts of Case**

The worker is seeking a determination of worker classification for services performed for the firm as a head and assistant coach from November 2024 until March 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker believes that they were an employee of the firm because they worked under the firm director's supervision. The worker verbally agreed to coach for the firm, and there were no written agreements between the parties.

The firm states that they are a sports organization and club that has volleyball teams that practice and compete in local and national competitions, striving to improve the skills of young athletes. The worker provided services for the firm as a coach, running practices for teams they coached and attending tournaments with them. The firm classified the worker as an independent contractor because everyone that works for the firm gets a 1099-NEC, due to industry practice for similar organizations and the fact that dues would be much higher if workers were classified as employees. There were no written contracts between the parties.

The firm states that the worker had to complete mandatory training to become a head coach, which included instructions on job duties and background checks. The firm provided additional guidance. After being assigned as a head coach, the worker was in charge of a team and the firm would supervise as needed. Job assignments were provided to the worker in person. If the worker encountered any problems or complaints while working, they were required to contact the firm owner. All parties involved would be responsible for problem resolution. There were no reports required of the worker. Services were performed as scheduled at local gyms. The firm required the worker to attend meetings with no penalties incurred if they did not attend. The firm required the worker to personally perform services. The worker could not hire helpers or substitutes and was not responsible for their payment. The worker states that they had been coached by the firm for five years prior to the work relationship. The club director provided job assignments to the worker in person, determined the methods by which job duties were performed, and assumed responsibility for problem resolution. The worker had no authority to hire helpers or substitutes.

The firm states that they provided volleyballs, a cart, a coach bag with first aid kit, athletic tape, a whistle, polos or t-shirts, and the gym space. The worker did not provide or lease anything. The worker incurred the job-related expenses of hotel stays, parking garage fees, and food expenses. The firm reimbursed the worker for all expenses that were incurred during the course of their regular job requirements. Customers paid the firm. The firm paid the worker a set monthly amount, with the amount differing depending on whether the worker performed services as a head coach or an assistant coach. The worker did not have access to advance pay. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided volleyballs, a ball cart, first aid kits, and spirit wear. The worker did not provide or lease anything and had no unreimbursed job-related expenses. The firm paid the worker on a monthly basis. The worker had no exposure to financial risk or economic loss while working for the firm.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The firm represented the worker to customers as a coach performing services under the firm's name. The worker is no longer performing services for the firm as the job was completed. The worker states that they did not perform similar services for other firms or advertise their services to the public. The worker was still performing services for the firm at the time that they submitted their request.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation as a sports organization. The firm provided work assignments by virtue of the customers served, provided mandatory training to the worker, supervised the worker on occasion, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. In this case, the worker did not invest capital or assume business risks. 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. The worker had no financial risk or job-related expenses. Based on the monthly set rate of pay arrangement, established by the firm, the worker could not realize a profit or incur a loss.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business as a sports organization. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.