

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.20 Personal Care Worker	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

Information provided indicates the firm is a physical fitness gym. The worker performed services for the firm for tax years 2012 through 2014. The firm reported the income on Form 1099-MISC stating the worker was a private personal trainer and therefore an independent contractor. The worker filed the SS-8 as he feels he was an employee and represented as a member of the staff.

The firm stated the worker had his own personal private clients which he set his own pay structure. From October 2012 through June 2013 the firm stated he only assisted in painting the gym, passing out flyers and light repair work as needed. The firm stated he was given no training or instructions and no assignments. The firm stated the worker owns his business and trains himself, personal and private clients and family. There are times he sits at the front desk, sometimes with his girlfriend to market his own personal training business. The firm stated the worker would hire and paid any subs he needed, it was the workers business. The firm stated they provided the fitness facility, with weights and cardio machines. The worker provided his own personal equipment such as bungees, ropes etc. The firm stated he did lease the facility. It was a verbal agreement, he pays rent for the facility, all personal, private clients must be members, clean up after his clients, watch the front desk as needed, and receives a commission for all his sales. The worker only received commission on his sales. The firm stated he was given cash advances every 15 days. Rent due is deducted from commissions every 30 days. The firm stated the private clients paid the worker; he sets the cost to train with him, collects his own monies from them and keeps his own records. He is paid no salary from the firm. Either party can terminate the work relationship without incurring a penalty or liability. He does perform similar services for others. He is represented as a personal trainer for hire. The firm stated the contract ended because he failed to perform.

The worker stated he performed all duties on an employee checklist, recorded hours worked (time sheet), attended mandatory staff meetings, picked up gym supplies, open gym for use and close gym at the end of the day. He was required to purchase and wear staff uniforms, and to sell merchandise to gym members. He was provided with computer training, cash register training, equipment maintenance, cleaning restrooms, answering phone calls and signing contracts. Work assignments were posted daily at the gym and given by text message. He was to provide a daily tracker report of the items sold, cash in / out etc. he stated he worked Tuesday 5-10, Wednesday 5-10, Saturday 12-7 pm and Sunday 8 -5. All services were performed on firm premises. He attended regular staff meetings. He was to perform his services personally. The manager/owner hired and paid all staff. The firm provided all supplies, equipment and materials and property. He was required to purchase and wear staff uniforms. He stated he was paid by the hour and commissions, 7% of contracts signed. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as a member of the staff. The worker provided a copy of the Daily Cash Tracker Form, a copy of the Daily Gym Duties sheet, clean equipment thoroughly check sheet, copies of the Staff T-shirts they were required to wear, and purchase receipts signed by [REDACTED], Manager of the firm.

The firm's web site highlights their trainers, and advertises two free sessions for twenty-five dollars. It does show their staff, wearing the company shirts with logos. It invites all to join their amazing crew.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context.

Analysis

Therefore, your statement 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.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. There appears to be no valid lease agreement between the firm and the worker. The firm stated the clients had to be members of the gym, indicating the worker was not free to bring in his own clients, unless they were members of the gym. The worker was required to complete company check lists, of items sold, cash in, cash out, equipment cleaned etc. The firm provided no documentation showing the worker's personal training business. The firm's web site stated come join their crew, their trainers will assist them in coaching their fitness needs.