

SS-8 Determination—Determination for Public Inspection

Occupation

08PRO Professional Athletes

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 initiated the request for a determination of her work status as a USAG Women's Gymnastics coach in tax year 2018 and 2019, for which she received Form 1099-MISC. The firm's business is described as USAG Women's Gymnastic Training Center. The worker provided a copy of her application for employment and Form I-9.

The firm's response was signed by the managing member. The firm's business is a gymnastics club; and the worker provided services as an assistant coach, coaching gymnastics.

The worker stated the firm directed her to complete training online at USA gymnastics. Her job assignments were given by the firm on a daily basis and the firm directed her with regards to which group of athletes to train/instruct. It was the firm's head coach (or other designated person) that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm's head coach or the firm's owner for resolution. The worker's services were rendered Tuesday and Thursday 4-8pm and Saturday 8am to 12pm with additional hours for competitions assigned. The worker performed her services on the firm's premises or at competition locations. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, there was no specific training and/or instructions given to the worker. The firm asked if the worker was available at certain times; she could accept or decline based on her availability. The worker determined the methods by which she performed her services. The worker was required to contact the head coach if problems or complaints arose and the firm's head coach was responsible for the resolution. The worker determined her own schedule. The worker's services were rendered at the firm's location; and, she may participate in coaching at competitions. The worker was required to perform the services personally.

The worker responded that the firm provided the facility, all gymnastic equipment, and office supplies; the worker furnished first aid supplies. She stated that she also incurred the expense for mileage to attend competitions, and the firm reimbursed her for the mileage expense. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage. The customers paid the firm. The worker was covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm/owner established the level of payment for the services provided.

The firm acknowledged that the firm provided the gymnastic equipment; and, the worker furnished resistance bands or other conditioning equipment, at her discretion. The worker did not lease equipment, space, or a facility. The firm reimbursed for mileage and food expenses. The firm concurred the worker was paid on an hourly basis, the customers paid the firm, and the worker was covered under the firm's workers' compensation insurance policy. It was unclear to the firm if worker was at risk for a financial loss in this work relationship. The firm established the level of payment for services provided or sold.

The firm and worker concur that no benefits were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker indicated she was not performing same or similar services for others during the same time frame; it was unknown to the firm as to whether she was or not. The firm responded that the worker is represented as an assistant coach that helps out from time to time depending on the firm's needs and her availability.

The firm's representative provided an additional explanation of the firm's operation. Instructors work with beginner gymnasts. If no instructor, no class. Coaches work with more advanced gymnasts (a team) to prepare for competitions and are required to have greater experience and USA gymnastic certifications. If no coach was available, no class. The Assistant coach (the worker), had no classes and no team. The worker was a former student, hired with no certifications, because the firm had first-hand knowledge of her gymnastics ability. She later obtained level one certification. If worker was available, she would attend a training; identify student(s) in need of additional focus, and work with them; she would be paid her hourly wage. If she was unavailable, the trainings went on without her. If she was requested to attend an offsite competition, she could attend or not based on her availability. It was nice to have her assistance, but the event went on either way. If she attended, she was paid. If event, was canceled due to weather she was not paid.

Analysis

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

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.

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.

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. 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

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 as an assistant coach.