

# SS-8 Determination—Determination for Public Inspection

Occupation 08PRO Professional Athletes	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 co-founder and coach in tax year 2018, for which she received Form 1099-MISC. She coached group fitness classes and performed administrative duties. The firm's business is described as fitness coaching/training.

The firm's response was signed by a partner. The firm's business is providing small group fitness classes led by certified instructors. The worker provided services as a coach and led small group classes. Coaches are assigned classes for the sake of organization, with the coaches having the ability to cancel, reschedule, or change their assignments. The firm provides high-level guidelines on how a class should be run and the duration of a class, and all coaches run their class as they see fit.

The worker indicated she was given instructions on when to be there, the work to be performed while on duty, and to attend bi-monthly meetings. Her job assignments were through online platforms. The firm's founder and GM/head coach determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises at 6 am on Monday and Thursday and 7am on Saturday. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, the coaches must be a certified Level 1, a requirement of [REDACTED] HQ. The job assignments can be selected and are on a first come, first served basis. The worker, in accordance with the general [REDACTED] method, determined the methods by which the worker performed the services. Any problems or complaints encountered by the worker were directed to the firm's operational staff, both of whom are employees, for resolution. The worker was required to report how many classes she led so the firm could make a determination on how much to pay the coach. The worker's services were rendered at the firm's location. The worker was required to perform the services personally.

The firm and worker acknowledged the firm provided the facility and all equipment, the worker furnished nothing, and she did not lease equipment, space, or a facility. The worker stated she was paid an hourly wage; the firm did not respond regarding the manner in which she was paid. Both parties concur that the customers paid the firm, the worker was not covered under the firm's workers' compensation insurance policy, and the worker was not at risk for a financial loss in this work relationship. The worker did not establish level of payment for services provided; however, the firm added that the firm negotiated the pay with each coach individually based on the coach's experience level.

The firm and worker agree there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm responded that the worker was performing same or similar services for others during the same time frame; and, it is common for fitness instructors to work at different locations. The worker indicated she was not providing same or similar services for others. Both parties responded that the firm terminated the work relationship.

The worker provided a copy of a letter addressed to her dated 12/20/2013 welcoming her to the staff, the core values of the business, and the continuing on-boarding as to expectations and responsibilities. She also provided a copy of a calendar of classes and the scheduled coaches.

The firm provided copies of the Forms 1099-MISC for tax years 2014, 2015, 2017, and 2018. Research shows Form 1099-MISC was issued for 2016 as well.

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## Analysis

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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.

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.