

SS-8 Determination—Determination for Public Inspection

Occupation 02ADM.8 Administrator	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 operating a financial consulting business for [REDACTED]. The firm engaged the worker through a referral and application process to perform business consulting services with the firm's management and employees in various business programs used in the business operations. The firm provided the worker with orientation on the firm's operating system. The firm assigned the worker services to perform and schedules approved to perform the services. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm's designated management regarding any problems or complaints for resolution. The firm required the worker to provide various work reports. The firm determined the worker's work schedules based on designated number of hours approved by the firm. The firm required the worker to perform the services at the firm's premises and other designated locations. The firm required the worker to attend meetings when present or via conference calls. The firm required the worker to perform the services personally. The firm required the worker to obtain the firm's approval to hire substitutes or helpers and the firm would reimburse the worker if she paid any.

The firm provided office equipment, materials, and supplies needed by the worker to perform the services. The worker provided home office equipment if needed. The worker did not lease equipment or space. The worker incurred office supply expenses which were reimbursed by the firm. The firm paid the worker an hourly wage. The customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services and the worker agreed to the hourly wage in a agreement.

There was a signed independent consulting agreement between the firm and the worker. The firm indicated the worker did perform similar services for others and was required to obtain the firm's approval. There was a no-compete clause included in the independent consulting agreement. The worker did no advertising as a business to the public but did advertise her credentials and experience on the web. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the worker's services in verbal conversation by providing worker a sixty day notice and subsequently a letter which indicated the number of hours the worker could perform services and work schedule to work until the day of termination.

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. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. In this case the firm engaged the worker through a referral to perform services under the firm's management and employees. The firm provided the worker with the necessary training to perform the services according to business practices and procedures. The firm assigned the worker services to perform and hours to perform the services based on the firm's business needs. The firm required the worker to provide the firm with various business activity reports. The firm required the worker to contact the firm regarding problems or complaints for resolution. The firm required the worker to attend meetings when present and via conference calls. The firm required the worker to perform the services personally mostly at the firm's place of business or other designated locations. The firm hired and paid substitutes or helpers directly and indirectly. 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 office equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items when working from home. The firm reimbursed all office supply expenses incurred by the worker. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operations. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor consulting agreement between the firm and the worker indicating the worker to be an independent contractor. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The firm indicated the worker did perform similar services for others and was not prohibited from doing so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did not advertise to the public as being engaged in a business operation. The firm issued pay documents to the worker under the worker's personal identification number and name. The worker personally perform services for the firm's business operation under the firm's business name on a regular and continuous firm scheduled basis mostly at the firm's place of business over several months.

Both parties 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.