

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF.225 AdministrativeAssist	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 an individual who makes soap and sells products, lessons, and unrelated items on line to customers. The firm engaged the worker through an ad and application process to perform administrative assistant services for the firm's various business operations. The firm and firm's designated supervisors assigned the worker services to perform and provided the necessary training and instructions to perform the services according to business policies and procedures. The firm required the worker to contact the firm or supervisors regarding any problems or complaints for resolution. The firm, supervisors, and worker determined the methods used to perform the services. The firm required the worker to submit invoices and other work related reports. The firm allowed the worker to perform services on a flexible scheduled basis. The firm required the worker to perform the services at the firm's home office location. The worker performed the services personally and the firm indicated this was not a requirement by the firm. The worker would be required to pay any substitutes or helpers engaged and would not be reimbursed if the worker paid any per the firm.

The firm indicated not providing any equipment, materials, and supplies and did not know what the worker provided. The worker stated the firm provided a computer, office equipment, materials and supplies. The worker did not lease equipment or space. The worker incurred expenses for certification courses required to be obtained in order to perform services for the firm's business and the firm reimbursed all certification course expenses. The firm paid the worker an hourly wage and the customers paid the firm for the products sold. The firm determined the level of payment for the products and agreed to hourly wages paid to worker for performance of services. The worker could not suffer any economic loss and had no financial risk with regard to performance of the services.

There was a signed Independent Contractor Agreement provided between the firm and the worker. The agreement indicated the services the worker was contracted to perform but was not limited to those listed, The worker would provide all the necessary equipment to provide the services, Termination, payment of hourly wage, ownership, confidentiality and other work relationship issues were in the agreement. The worker did not perform similar services for other businesses. The worker did no advertising as a business to the public. The worker personally performed services for the firm's various business operations under the firm's business name on a regular and continuous part-time scheduled basis over several months. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability by providing a written notice.

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. In this case the firm engaged the worker through an application process to perform administrative assistant services for the firm's various business operations. The firm assigned the worker daily duties to perform and verbally assigned other services as needed. The firm provided the worker with the training needed for certification in order to perform some of the assigned services and through firm assigned supervisors. The firm assigned the worker work schedules based on the firm's business needs. The firm, supervisors and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide invoices for services performed and other reports as requested by the firm. The firm required the worker to perform the services at the firm's home office location. The worker performed the services personally. The worker did not hire or pay any substitutes or helpers. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease equipment or space. The worker incurred expenses for necessary certifications and testing and the firm reimbursed the expenses. The firm paid the worker an hourly wage and the customers paid the firm for products sold. The firm determined the level of payment for the products and services performed by the worker. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker had no financial control or risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed independent contractor agreement between the firm and the worker. The agreement indicated the services the worker was being engaged to perform as well as other services mutually agreed upon in writing, required worker to provide the necessary equipment to perform the services, and other work related issues. 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 worker did not perform similar services for others while performing services for the firm's business. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business at the firm's home office location under the firm's business name on a regular and continuous part-time scheduled basis under firm designated supervisors over several months.

The firm and worker retained the right to terminate the working relationship at any time without incurring any liability for termination. 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.