

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.29 Overseer	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 a business that rents event space and arranges event services for customers. The firm engaged the worker through a recommendation to arrange events for firm customers and construct contracts for the events. The firm provided the worker with business policies and procedures training and instructions on event planning, negotiating, and writing contracts regarding menus, pricing, and vendors per the worker. The firm indicated no training or instructions were provided. The firm assigned the worker services to perform per the worker. The firm indicated there were no assignments. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker provided the firm with reports regarding events, event details, and contract information to be reviewed and approved. The firm required the worker to perform the services during firm established schedules as needed and allowed the worker to perform services on a flexible variable scheduled basis other times. The worker performed the services at the firm's place of business, designated event locations, and from home. The worker was required to attend meetings as requested by the firm and meetings with firm's customers per the worker. The firm indicated the worker was not required to attend any meetings. The worker was required to perform the services personally. The firm provided substitutes or helpers if needed and paid them. The firm's approval was required for the worker to hire any substitutes or helpers.

The firm provided everything needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm reimbursed business expenses. The firm paid the worker a monthly salary + commissions and the customers paid the firm according to the terms of the contracts. The firm carried workers' compensation insurance. The firm determined the level of payment by the customers for the services and products and agreed to the amount paid to the worker when hired. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's approval to do so. The worker stated no similar services were performed for others while performing services for the firm. The worker did no advertising to the public as being engaged in a business. The firm referred to the worker as an event director under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services.

The firm engaged the worker as an event coordinator and provided the worker with training and instructions on the firm's business policies, procedures, negotiating contracts, writing contracts, menus, pricing, and choice of vendors. The firm assigned the worker services to perform based on the firm's business needs. The firm and the worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to submit activity reports and event reports for approval. The workers daily schedules varied based on the firm's business needs, event times/schedules, and appointments with firm's customers/vendors. The worker performed the services at the firm's place of business, event locations, and from home. 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. The worker attended meetings with the firm and firm's customers. The firm required the worker to perform the services personally. The firm provided and paid substitutes or helpers if needed. 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 on-going 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 operation. The firm provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any expenses and the firm reimbursed all business expenses. The firm paid the worker a monthly salary + commissions. The customers paid the firm according to the firm's contracted terms. The firm determined the level of payment for the services and products paid by the customers and agreed to the worker's payment for the services when hired. 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 operation. These facts evidence financial control by the firm over the services performed by the worker. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered having control over profit or loss in a working relationship.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do 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 no advertising to the public as being engaged in a business. The worker personally performed services for the firm's business on a regular continuous as needed basis under the firm's business name over several months.

Both the firm and the worker 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.