

SS-8 Determination—Determination for Public Inspection

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| Occupation 04FSC.37 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 501(c)(3) exempt organization in the state licensed business of providing residences, treatments, and job training to low income, homeless, and recovering individuals. The firm engaged the worker through an application process to perform security and other services as needed to residents of the firm's facility. The firm provided the worker with state required training on various programs, the firm's resident policies and procedures training, and other training as needed. The firm assigned the worker services to perform based on the firm's department needs. The firm and worker determined methods used to perform the services. The firm required the worker to contact designated staff regarding problems or complaints for resolution. The firm determined work schedules based on the firm's business needs and allowed the worker to accept or decline job offers. The worker was required to perform the services personally at the firm's place of business.

The firm provided emergency contract information and a transportation vehicle as needed. The worker provided a personal cell phone. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and the firm was paid through various resources. The firm did carry an umbrella workers' compensation insurance policy. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There was a contract employment agreement signed by the worker as an employee and witnessed by V.P. Human Resource that indicated the worker was engaged in the capacity of contract/PRN for a temporary period and would abide by all firm policies and procedures. The worker did have another job and was not required to obtain the firm's prior approval to do so. The worker did not advertise as a business to the public. 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. 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 significant on-going 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. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed contract employment agreement in 2014 signed by worker as an employee and a witness. The agreement indicated the worker to be a contractor engaged temporarily to perform contract/PRN services. The worker was required to abide by company policies, procedures and federal regulations when performing services. 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 fact that a worker may perform similar services for others would be an important factor to consider in an independent contractor relationship; however, this factor alone would not make the worker to be an independent contractor. Many workers work at more than one job at a time and may be employees in one or all of the working relationships depending on the autonomy of each one. The worker personally performed services on a variable part-time basis at the firm's place of business under the firm's business name over several months. The worker did no advertising as a business to the public.

Both the firm and 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.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare). Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.