

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI.40 Companion Sitter	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 firm is operating a personal care referral business linking qualified individuals to perform services for firm clients. The firm engaged the worker through an application process to perform personal care services for clients based on the worker's credentials, experience, and clients needs. The firm notifies the worker as qualified jobs become available and if the worker agrees to perform the jobs the worker interviews with the clients to determine compatibility. The firm provided the worker with extensive written policies and procedures with regard to what, how, when, and where the firm required the worker to perform the services for the clients. The firm, worker, and clients determined the methods used to perform the services. The firm required the worker to contact a firm designated nurse or the firm regarding any problems or complaints for resolution. The worker provided and completed work and time reports as required by the firm. The worker's daily routines varied based on the clients needs. The worker performed the services mostly in the clients home and other locations as needed and assigned by the firm. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed per the worker and the firm indicated hiring and paying substitutes or helpers was between the worker and the client and they determined who paid them.

The firm provided paperwork and clients. The clients provided equipment, materials, and supplies in the home, the worker provided a license and personal items needed to perform the services. The worker did not lease equipment or space. The worker incurred expenses for license and personal items. The firm did not reimburse any expenses. The firm paid the worker an hourly wage every 2 weeks and the clients paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services per the worker. The firm allowed the worker to negotiate a different rate with the clients per the firm and was required to notify the firm within 24 hours of such a negotiated rate as the firm's payment was based on the rates paid. The worker's economic loss and financial risks were related to damages or injuries per the worker, the firm did not know what economic loss and financial risk the worker could incur.

There were many agreements between the firm and the worker signed mostly by the worker and some by firm representatives. All aspects of the job were covered in various signed agreements. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others while performing services for the firm. The firm stated the worker advertised as a business through word of mouth and the worker indicated not advertising as a business to the public. The worker performed the qualified licensed services under the firm's business name for the firm's clients on a regular and continuous basis over several years. The firm referred to the worker as a contractor under the firm's business name to the firm's clients. Both the firm and the worker 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. When the services being performed by workers are both necessary and integral to the firm's business operation it is both necessary and integral to the firm's business reputation and results that the firm retains control over the services being performed in order to obtain the firm's client's satisfaction. In this case the firm engaged the worker through an application and interview process to perform services for the firm's clients based on the client's needs and worker's credentials as determined by the firm, clients' resources, and worker agreements. Once the firm notified the worker of the availability of qualified jobs and the worker accepted the jobs, the firm required the services to be performed according to the firm's business policies and procedures. The firm required the worker to contact the firm or firm's designated nurse regarding any problems or complaints for resolution. The firm required the worker to provide the firm with work reports for billing and payment purposes. The firm and client determined the worker's daily routines based on the client's needs. The firm required the worker to perform the services personally at the client's home or other designated locations. The firm hired and paid substitutes or helpers if needed unless the client hired and paid any in an agreement with the worker. 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. 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. The firm provided the client and paperwork needed by the worker to perform the services. The worker provided credentials and personal items and incurred expenses related to maintaining the credentials and use of personal items. The client provided equipment, materials, and supplies in the client's home required by the worker to perform the services. The worker did not lease equipment or incur any significant on-going business expenses. The firm paid the worker an hourly wage every 2 weeks and the clients paid the firm. The firm determined the level of payment the clients paid for the services. The firm allowed the worker to negotiate a different rate with the clients and notify the firm if an agreement is entered into due to the firm's pay was based on the clients payments for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker had no financial risks with regard to the services performed for the firm's business clients. These facts evidence financial control by the firm over the services performed by the worker. The risk of damages or injury in a working relationship would not be considered having financial control of a business operation.

There were many worker signed working relationship agreements with regard to the services, policies, procedures, and classification of worker as an independent contractor. The firm stated the worker did perform similar services for others while performing services for the firm's business 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 firm stated the worker advertised through word of mouth to being engaged in a business and the worker indicated not advertising as a business to the public. The worker personally performed services on a regular and continuous basis for the firm's clients at the firm's clients homes or other designated locations under the firm's business name over a period of several years.

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.