

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE.48 Instructor/Teacher	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**

Information provided indicates the firm is a strength and conditioning facility. The worker was retained in 2013 and 2014 as Head Strength Coach. The firm stated there was no written agreement. The firm reported the income on Form 1099-MISC.

The firm stated there were no specific training or instruction provided by the firm. The worker cultivated his own clients and was offered clients by the firm. The firm indicated the worker scheduled his own hours and training routine. Services were performed on firm premises and offsite client facilities. The firm stated there were weekly meetings, but the worker's attendance was not required. He was paid if he attended. Services were to be performed personally. The firm stated the worker would have hired and paid any subs needed. The firm provided the physical location, weight equipment, basic office supplies, computer, and restroom facilities. He provided his personal expertise and personal computer. The firm stated the worker did not lease equipment or space. The firm stated the worker was paid on a commission basis. The firm stated he was offered the title of Head Strength Coach which had no job duties or responsibilities associated with the title. It was strictly to give OZ a market advantage over their competition as the worker held an Olympic Lifting certification that was unique, and gave them an advantage. The offered him a monthly fee for using his name on their website and for marketing purposes. The firm stated he set his own training fee structure with the clients that OZ did not provide to him. He was given a choice to accept or decline any client offered to him. E-mails to his clients and other OZ staff had a link directing them to his personal / professional website stated for information or and advice on sports performance, strength and condition and fitness check out www.CoachMikeCaro.com". He was not required to perform any duties such as cleaning, answering phones etc., or to be present at the OZ facility other than for his clients that he scheduled. The firm stated the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated he was listed on the company website as one of the available coaches. All trainers and strength coaches are listed on their website. The firm stated the worker quit.

The worker stated he had contacted the firm seeking full time employment and complete a job application as part of the firm's hiring process. When hired he was asked if he wanted to be on the books and he told the firm he did. The worker indicated he was provided training on how daily operations worked at the facility, how to use the POS system and how to use the scheduling software. During his employment at the business, several freelance personal trainers paid a fee to use the firm's facility and equipment. AT no time did he pay that rental fee to use the facility. He collected payments made out to the business and then was paid on a bi-weekly basis. All the clients he worked with were clients of the firm. He was provided a desk, office space and company business cards. He also sold apparel and nutritional supplements sold by the firm. He attended conferences and seminars, which the firm paid all registration and hotel fees. He was also required to attend staff meetings, where he would update them on clients, their accounts, potential new clients, facility/equipment needs etc. He was represented as part of the staff on the firm's website. The worker stated he was also in charge of all scheduling, training and payment collecting for eight teams from the local Sport Club Soccer Program. The worker stated the firm hired and paid all workers. The firm provided all equipment, supplies and space. He stated he was paid, by the hour, commissions and salary. The customers paid the firm. The worker indicated he gave his two week typed notice.

The worker provided documentation:

- of e-mails between himself Todd and Paul from January through October of 2014, discussing, staff meetings, business planning/development, hiring of new employees, interns, their website page/photos etc.
- copy of a social media post wishing him a Happy Birthday and what an addition to the OZ family he has been.
- A copy of the original agreement between himself and Todd, stating he would work with Paul on Thursday, Friday and Saturdays. Paul's injury clients would be his personal training clients. He was to host and visit coaches from various teams and schools in the Ft. Wayne area, Todd would set up the visits. He would be paid 60% commission on new sports groups.
- e-mail discussing his base salary would be \$1000 per pay period, would be through their normal payroll system, set pay days were every other Friday.
- e-mail pertaining to Kirk Eggebrecht indicated Mike would be handling the SC Soccer Groups.
- copies of staff meeting notes.
- a copy of his company business card, representing him as the firm's head strength and conditioning coach.
- copy of his resignation letter.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker’s status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker’s activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient’s regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.