

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.34 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 substance abuse treatment services facility. The firm engaged the worker through a master service agreement and statement of work agreement to perform resident and residential management services for the firm's business and business customers. The firm provided on the job training with regards to performance expectations on providing services. The firm assigned the worker jobs to perform via the agreements as well as verbally based on business needs. The firm and worker determined the methods used to perform the services. The firm was required to be contacted regarding any problems or complaints for resolution. The firm required the worker to provide reports according to the statement of work agreement. The worker's daily schedules varied based on the firm's business needs. The worker performed the services at the firm's place of business and other locations depending on the firm's and firm's customers needs. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided a van and housing per the worker and the worker provided a cell phone. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker a weekly salary upon submission of invoices and the firm was paid through customer resources. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services paid by the customers and agreed too with the worker. The worker's economic loss and financial risks were related too firm designated insurance coverage requirements indicated to be provided by the worker in the master service agreement.

The agreements provided by the firm between the firm's business and the worker were not signed. The worker indicated no similar services were performed for others and worker did no advertising as a business to the public. The firm indicated unknown to both these issues. The firm referred to the worker as a contractor to the customers. 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. In this case the firm engaged the worker to perform resident and residential management services for the firm's business. The firm provided the worker with on the job training on job expectations. The firm assigned the worker services to perform in various written agreements and verbally. The firm and worker determined the methods used by the worker 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 was required to be contacted regarding any problems or complaints for resolution. The worker was required to provide the firm with reports as indicated in the statement of work document. The worker's hours varied based on the firm's business needs and firm's customers needs. The firm required the worker to perform the services at the firm's place of business and other designated locations depending on the services the worker was performing for the firm's business operation. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed. The firm's approval was required for the worker to hire helpers and the firm would reimburse any payments if the worker paid them. 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 provided a van, equipment, and materials needed by the worker to perform the services. The worker provided a cell phone. The worker did not lease equipment or space. The firm paid the worker a weekly salary and the firm was paid through the firm's customers resources. The firm determined the level of payment for the services paid by the customers and agreed to be paid to the worker. 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 being performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed contracts between the firm and the worker. There were unsigned agreements provided indicating the worker to be a contractor. 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 on a regular and continuous as needed basis at the firm's place of business or other designated locations 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.