Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05ITE Instructors/Teachers	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] None [ ] 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 worker submitted a request for a determination of worker status in regard to services performed for the firm from April 2019 to January 2020 as a strength and conditioning coach. The firm issued the worker Form 1099-MISC for 2019 and 2020. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error because they were paid a salary on a regular basis, performed services at the firm's premises under their supervision, and used the firm's equipment and property for their job duties. There was no written agreement between the parties.

The firm's response states it is a sports performance gym. The work provided by the worker was as a sports performance coach. The worker was requested to train performance athletes as well as provide personal training. The firm did not provide supervision or direction. The firm determined the worker to be an independent contractor due to a precedent set in the industry.

The firm states that the worker was made aware of standard training times that were available at their discretion. The worker was able to pick and choose when they wished to train individuals during these available training times. The worker determined the methods by which they performed their assignments. The worker was required to contact the firm for problem resolution as the firm owned and operated the gym premises. The worker did not have to provide the firm with any reports. The worker was able to create their own training schedule based upon available training times provided by the firm, and there was no set schedule. The worker performed services 75% of the time on the firm's premises and 25% of the time at various off-site locations. The worker did not have to attend any meetings but the firm required the worker to personally perform services. Helpers or substitutes were not applicable to the work situation. The worker states that little instruction or training was provided by the firm. The worker had meetings with the firm two to three times weekly. The worker received job assignments directly from the firm's owner, who also determined the methods by which job assignments were performed. The worker had some individual discretion regarding training sessions and methods used. The owners of the firm were responsible for handling problem resolution. There were no formal reports required, but there were occasional verbal debriefings after training sessions. The worker would arrive at the firm location at 2pm Monday through Friday, attend a one-hour to one and one-half hour meeting before work, then train athletes in various group sizes until 8pm. All program planning and design had to be done on the worker's own time. The worker states that all training sessions were performed at the firm's gym premises. The worker was required to attend all staff meetings two to three times weekly, and the owners would be upset if the worker did not attend. The worker was required to perform all services personally. If helpers or substitutes were required, the firm was responsible for hiring and paying the additional help.

The firm states that they provided the worker with gym space, and the worker provided the workouts and clients. The worker did not have to lease any space, facilities, or equipment. No expenses were incurred by the worker. The worker was paid by each session completed and did not have access to a drawing account for advances. The firm would receive payment from their own clients and the worker would receive payment from their own clients. The firm did not carry worker's compensation insurance on the worker, and the worker did not have any exposure to economic loss or financial risk. The firm states that the worker established the level of payment for services rendered. The worker states that the firm provided all training spaces and workout equipment needed for the training sessions. The worker did not have to provide anything. The worker's only expenses were gas, car mileage and repairs, their personal phone, work clothing and shoes. The worker received a salary from the firm. Customers of the firm paid the firm. The worker had no exposure to economic loss or financial risk. The firm set the level of payment for all services rendered.

The firm states that they did not provide the worker with any benefits. The relationship between the parties could be terminated by either party without liability or penalty. The firm states that the worker performed similar services for other firms during the work relationship and did not require approval from the firm to do so. There were no non-compete agreements in place between the parties. The worker was not a member of a union and did not advertise their services to the public. The worker was represented by the firm as an independent trainer performing services under the firm's name. The work relationship ended when the worker quit. The firm states that the worker was not responsible for soliciting clients for the firm. The worker states that the firm did not have a formal discussion about benefits but that they were able to take personal days around the holiday. The relationship between the parties could be terminated without liability or penalty. The worker states that they did not provide similar services for other firms during the work relationship. The worker states that they did not advertise their services to the public, but advocation of the firm's services on social media were encouraged by the firm. The worker states that the firm represented the worker as a coach to the general public, and that they were represented as an employee of the firm under the business name of the firm. The worker quit because of numerous disagreements with the firm's ownership.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm’s business operation of offering personal training. The firm provided work assignments by virtue of the customers served and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks. 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. Based on the salary pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business of offering personal training and sports performance training. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.