

**SS-8 Determination—Determination for Public Inspection**

Occupation 02CON.8 Consultant/Advisor	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**

Information provided indicated [REDACTED] (the firm) is a contract provider of medical examinations for [REDACTED] and state disability claims, insurance physicals, [REDACTED] physicals and other types of medical exams. It performs the services at approximately 45 locations in 11 states. Medical exams normally are performed on Saturdays in clinics subleased by the firm. The firm stated other than a brief explanation of the forms they use and procedural issues, such as opening the office, faxing paperwork etc, no training or instructions were given. The schedule is conveyed to the worker a month in advance and the worker can agree to the number of shifts she wants to work for that month. The home office sends the forms the worker needs to fill out. The worker completed health information intake sheets in connection with the patient's disability evaluation. The worker would arrive at the clinic about 30 minutes prior to the clinic, get set up, greet patients, hand them paperwork to fill out, take them to the back and get their vital signs, and then fill out the intake sheets. The worker works at a clinic that the company subleases one or two Saturdays a month. No meetings are required. The company must approve all workers to ensure they are competent enough to do the work required. The firm pays all workers. The firm provided all basic office supplies, and blood pressure cuff. The worker was paid by the hour, the patients paid the firm. The worker could negotiate her hourly pay. Either party could terminate without incurring a penalty or liability. If a patient asks, they are told she is contracted to perform services for them.

The worker indicated she had no contract or work agreement. The worker indicated she was provided one day of shadowing her predecessor on the job. She would receive text messages of assignments and cancellations of assignments and mailed schedules of patients and their paper work each week. She agreed she determined how she performed her services. She reported to [REDACTED] for any issues. She faxed completed patient information forms, vital signs, current medical condition forms, signed consent forms and the doctor's physical form to the firm. She performed services at the leased office space in [REDACTED] and [REDACTED]. She performed services 3 days a week approximately 9-10 hours a day. Services are to be performed personally. The firm pays all individuals. The firm provided all equipment and supplies. Shew as paid by the hour, paid for mileage to [REDACTED] and postage expenses. Either party could terminate the work relationship without incurring a penalty or liability. The firm provided a copy of the [REDACTED] agreement signed by the worker. This contract was signed on June 10, 2014. No contract was provided by the firm for services provided prior to that. The firm provided a copy of the worker's personal information/emergency contact information sheet also. The contract mainly discusses retaining confidentiality while performing her "assigned duties." Services are governed by the rules and regulations established under the [REDACTED], AND related polices and procedures of [REDACTED]. It does state he/she is free to set the hours worked. She is required to give 48 hours notice if she cannot work said scheduled shift.

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.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

## Analysis

- A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.
- Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
- A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.
- The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. See Rev. Rul. 73-591, 1973-2 C.B. 337.
- If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. See Rev. Rul. 56-694, 1956-2 C.B. 694.
- A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.
- Payment by the hour, 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.

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.

## CONCLUSION

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. Although the workers are free to determine the hours they are able to perform services. A flexible work schedule alone does not make a person an independent contractor. Once a work shift is accepted, all work is performed, under the firm's business name, under the firm's contract with [REDACTED] or [REDACTED], on the premises leased by the firm, utilizing the firm's equipment and supplies. The firm schedules all appointments and determined the hours the clinic would be open. This worker was paid by the hour, others were paid per patient seen. Either way, there was no opportunity for profit or loss.