

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Workers	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

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Facts of Case

Information provided indicates the firm is a behavioral health agency. The worker performed data entry services for tax years 2015, 2016 and 2017. The worker had been recommended by another Practitioner who had previously used her services. The firm reported the income earned on Form 1099-MISC and provided a copy of the independent contract agreement, the HIPPA addendum page was signed by the worker. That agreement stated the firm agreed to pay her eighteen dollars per hour. The firm stated she was free to accept or decline any project related to data entry, eligibility checks and scheduling, and often declined projects. The worker was aware of her status as a contractor, and was vigilant about maintaining independent contract status. The firm stated the worker made "their" own schedule and was paid when projects were completed. The hours and days worked were at the discretion of the worker/contractor. The firm stated the worker used many locations to complete the work. She could work from home, the firm's office or a coffee shop etc. She was not required to attend meetings. The worker had access to the firm's computers and phone, but was not required to use the office for the completion of projects. She provided her own personal computer, internet, home office etc. She has non-reimbursed fixed costs associated with the business projects. The firm indicated the customer paid the firm. The firm stated the worker was paid by the hour, contingent on the completion of the accepted project. The worker determined how many hours it took to complete a project. The firm indicated she performed similar services for others. Their permission was not required to do so. The firm represented her as a contractor. She finished the needed projects and started contracting elsewhere.

The worker filed the SS-8 on the advice of her accountant, as he felt she had been misclassified. The worker stated her position was front desk receptionist and administrative assistant to the doctor, which meant she had to be there the days he was there, usually three days a week, answering phones, reception work, clerical work, insurance billing, ordering supplies etc. All work was ongoing, never a specific project. The worker stated training classes were provided by the firm. The worker stated the firm asked her to sign a work agreement, but it was never signed. The original intent was supposed to be as an independent contractor, but she was under the direct of a supervisor from the beginning. Work assignments were given in person and via e-mail from the supervisor on site. The worker indicated she usually worked in the front office of the firm from eight-thirty to five, sometimes finishing work from home. She provide a copy of a statement from the firm, that indicated her expected work days was Wednesday from one to five, Thursday from nine to five and Friday from nine to five. Lunch times would be coordinated with the MD's whenever possible. She also provided a copy of the detailed, lengthy administrative job description. She was required to perform her services personally. The worker indicated the firm provided all supplies and materials required. She stated she had been paid by the hour, and submitted a timesheet every two weeks. and agreed the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. the firm hired another person, as an employee, whom she trained, the firm then started telling her she didn't need to come in as often as that person was managing the office. She indicated she left due to the antagonistic work relationship.

Analysis

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. 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.

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. The firm's 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. The job description alone, indicates the worker was required to be at the job on certain dates and times. The worker was paid by the hour, also an indication of an employer/employee work relationship.