

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

Occupation 02OFF Scribe	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 indicated the firm is a medical practice. The worker performed services in 2017 as a medical scribe for the firm. The firm reported the income earned on Form 1099-MISC. The firm stated the worker offered his services to the firm at the same time he performed services for other practitioners. The firm indicated they did not control the means and methods of how he performed his services. They only cared about the results of the work. The firm indicated no training was given. He was given a template of the medical chart notes used by the firm (which had been provided by the worker's prior employer). The firm indicated the worker arrived at the clinic and was present during clinic visits with patients, and typed reports of said visits. He would submit those reports. The firm indicated he kept an irregular schedule. Office hours are eight to five, he typically arrived at eight-thirty to nine (occasionally not showing up because of scheduling conflicts). All work was performed on firm premises. He was required to perform services personally. The firm provided the office space. A third party provided the laptop. The worker was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated he did perform services for others, their permission was not required to do so. The firm stated he was let go as his work was not satisfactory.

The worker filed the work classification request as he felt he should have been treated as an employee. He indicated he did not create his own schedule or have any flexibility as to the times he could perform his job. He stated he arrived at the office between eight and nine am and left between six and seven pm. He attended each appointment, scheduled by the firm, and recorded the required information. He submitted his timesheet every week detailing the hours worked. He agreed all work was performed on firm premises. He agreed he was to perform his services personally. The worker indicated the firm provided the lap top commuter. He agreed he had been paid by the hour. The patients paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He indicated the work relationship was mutually terminated, after reported issues of his quality of work.

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## Analysis

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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. All work was performed on a consistent, continuing basis, under the firm's business name, for the firm's patients. The work was performed on the firm premises, and required to be performed during the firm's business operating hours, while appointments were scheduled. The worker was paid by the hour and utilized equipment provided by the firm or a third party, therefore was not in a position to incur a profit or suffer a financial loss. It is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. No evidence was found the worker operated as a separate business entity.