

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

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| Occupation<br>OFF02.261 OfficeWorker | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                                 | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

**Facts of Case**

Information provided indicates the firm is a medical billing company. The worker performed those services for the firm's clients for tax years 2013, 2014, 2015, and 2016. For tax years 2013 and 2014 the firm issued Form 1099-MISC at year end, 2015 the worker was put on payroll and a W-2 form was issued. No changes in services took place. The firm indicated they did use an independent contract but because the services the worker was to perform would be short term in duration, an agreement was never formalized. (The firm indicated she was seeking full time employment while working for the firm.) The firm stated specialized billing software training and VOIP phone training was given. Work assignments were determined by the owner of the firm. As owner of the company he was responsible for resolution of any issues. The firm indicated the worker had no scheduled hours; hours were at the contractor's discretion. Services were performed on firm premises, contractor's home and at client offices. The worker was required to perform services personally.

The worker indicated she attend paid seminars and training related to the industry. Work assignments were delegated by the owner. Various reports were required, time clock report, aging reports, medical claims etc. The worker indicated services were performed eight to six, Monday through Friday, with flexibility. She was required to perform services personally.

The firm indicated they provided the computer and phone due to proprietary information. The worker provided her own laptop. The worker was paid by the hour, the customer paid the firm. The worker stated the firm controlled the dialogue with clients, provided office space, equipment and supplies. The worker agreed she was paid by the hour and the customer paid the firm.

The firm indicated bonuses were given. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she was introduced as the person provided the billing services for their client accounts. The firm indicated the worker quit in 2016.

**ANALYSIS**

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.

-Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

-A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

-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.

-Payment by the hour, week, or month generally points to an employer-employee relationship.

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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. Whether services are performed on a part time continuing basis or not, the worker did not own her own company to provide those services. Training was given by the firm and the worker was paid by the hour for those services. The firm converted the contractors to employee status in 2015 and they continued to perform the same services, albeit under a more "structured" environment. The firm indicated he determined and assigned work assignments throughout the work relationship. Therefore all income should have been reported on Form W-2 for all tax years involved. The services performed by the firm's medical billing staff were done so under the firm's business name, for the firm's clients.