

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

Occupation 02SAL Salespersons	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**

The firm operates a physical therapy practice. The firm engaged the worker as a physical therapist and also to assist the firm in marketing their business to acquire more business. The worker was paid as an employee for his physical therapy services and the firm stated the worker was treated as an independent contractor for his marketing services. The firm contends the worker performed services in two separate capacities. The worker stated he performed his services as other duties assigned by the firm.

The worker received his instructions from the firm. The worker received his assignments from the firm. The worker ultimately related upon the firm to resolve his problems and complaints. The worker was required to fill out medical documentation and to provide the firm with the contacts for adding new clients for the firm. The worker was required to submit receipts when taking potential contacts out to lunch. The worker's schedule was dependent upon the firm's patient list and then the worker was required to drum up business for the firm if there were no patients. The worker's services were performed at the firm's location or meeting with potential businesses to increase the firm's patient load. The worker was required to perform his services personally.

The firm provided the location and all supplies and equipment for the worker to perform his services. The worker was paid on an hourly basis. The patients pay the firm directly for the services they received. The worker could not suffer a significant loss in the performance of his duties. The firm established the level of payment for the services performed.

The firm stated the worker received bonuses. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others at the same time he performed services for the firm. The worker stated he was represented as an employee and performed services under the firm's business name and the firm stated the worker was represented both as an employee and independent contractor. The worker terminated his work relationship.

In a phone call with the worker he stated he was hired as a physical therapist. The firm was a new business and needed more clients. The firm had the worker meet with doctor offices to drum up more business. The firm paid the worker the same hourly rate for both positions. The worker stated he was treated as an employee and believed his meeting with doctor offices was just part of his duties for the firm.

Since the firm contends the worker performed two separate services I will address the services the worker performed for marketing as the worker was paid as an employee when he performed his services as a physical therapist.

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## Analysis

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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.

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. In the instant case, the worker did marketing to increase the firm's workload of patients. This demonstrated the worker's services were integrated into the firm's daily operations.

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 the instant case, the worker was required to perform his services personally which demonstrated the firm was interested in the methods used as well as the end result. The worker in this case was privy to how the firm operated their business so the firm was aware the worker had the knowledge to acquire new business for the firm according to the firm's business needs.

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. 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. In the instant case, the firm set the worker's hourly rate of pay as an employer. The worker

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. In the instant case, the worker could not suffer a significant loss as operating her own business. The firm provided the worker with space to perform his services and reimbursed him expenses incurred on an accountable plan which indicated an employer-employee relationship existed. There is no evidence where the worker is providing his services to the general public as operating his own business. The worker was dependent upon the firm for his service as an employee.

The worker was an employee according to common law. The information provided by both parties showed the worker was controlled by the firm as the firm set the worker's patient load and instructed him on what doctor offices for setting up appointments. The firm showed control when the firm set the worker's appointments and required the worker to submit reports. Financial control was demonstrated when the firm set the worker's hourly rate of pay. It was the firm that had the financial investment since the firm provided the location, all supplies and equipment for the worker to perform his services. The worker performed physical therapy and met with potential doctors to acquire more patients for the firm which demonstrated the worker's services were integrated into the physical therapy practice.

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.

Please go to [www.irs.gov](http://www.irs.gov) for further information.

Firm: Publication 4341  
Worker: Notice 989