

SS-8 Determination—Determination for Public Inspection

Occupation 04FSC.5 Overseer	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

The firm operates a [REDACTED] [REDACTED] under a contract to treat patients with chronic mental illness. The worker performed services for the firm as an assistant clinical director. The firm reported the worker's remuneration on Forms 1099-MISC for 2010 and 2011. The parties signed a Professional Service Agreement stating that no relationship of employment/employee existed between the [REDACTED] and the worker.

Information from the parties supports that the worker was an experienced therapist who was hired to oversee the functioning of the partial hospitalization program. She was required to follow the guidelines set by the firm's contract. She was initially provided with very specific two-week on-site training, and thereafter was subject to ongoing mandatory training. Her regular duties were contained in a written job description as including providing group, individual and family therapy, directing clinical staffing, managing clinical staff and inpatient assessment and treatment planning. She worked a regular schedule from 8:45 A.M. to 4:30 P.M. Monday to Friday. She was required to attend staff and clinical meetings and to participate in department in-service and annual reviews. She was required to prepare and submit therapy notes and audit reports. She states that apart from regular ongoing assignments, she usually received instructions and new assignments by phone or e-mail from her supervisor.

The firm provided general office supplies, equipment, and the property. The worker did not lease equipment or incur expenses in the performance of her services. The firm paid the worker on a salary basis or a rate of compensation based on group therapy attendance. The firm did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability. The worker stated that she did not advertise her services or provide similar services for others during the same time period. The worker terminated the work relationship.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, 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. If a firm has to make a worker "understand" or even if a worker "agreed to" being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker's status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training to perform her services, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and ensure that the worker followed the guidelines required under its contract. The worker performed her services on the firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker. There is no indication that the worker could engage and pay others to perform services for the firm on her behalf, meaning that she was required to perform her services personally. 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. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She was not engaged in an independent enterprise, but rather the services performed by the worker as an assistant clinical director were a necessary and integral part of the firm's partial hospitalization program business. 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 business. Although the firm did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.