

SS-8 Determination—Determination for Public InspectionOccupation
05COU TherapistDetermination:
☒ Employee ☐ Contractor

UILC

Third Party Communication:
☒ None ☐ 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**

According to the information and documentation submitted, the firm's business is a a counseling center providing behavioral therapy for adult and adolescent individuals and groups. The worker performed behavioral therapy services as a Therapist pursuant to a "Independent Contractor Service Agreement". The worker performed services from 2015 through 2017. The worker also performed services under the firm's previous entity from 2012 through 2016. The firm reported the worker's earnings on Form 1099-MISC at year end for all years.

The worker s personally performed her services at the firm's business location. The worker was provided with her patients through the firm's office staff. The worker provided assessments and weekly therapy (DBT) to individual/patients. DBT required being available for phone consultation 24 hours/day. The worker also completed progress treatment notes, treatment plans, ran patient skills group, and required consultation. The firm provided access to use of its therapy rooms, access to limited use of certain office equipment such as the copy machine, and secure filing cabinets to store confidential therapy records. The firm provided the worker with administrative support for billing and collections.

The worker was paid every two weeks, based on insurance payments received by the business for clients on her case load, minus a fee percentage determined by hours of work per that 2 week pay period. In addition, the agreement also provided the worker with loyalty hours to use during any pay period. The number of loyalty hours were based on the amount of years that the worker provided her services to the firm.

The worker performed similar services for others with the limitation that she could not use the same type of therapy offered at the firm's business. The worker was represented to the firm's patients as a therapist. The worker terminated her work relationship with the firm.

Analysis

According to the information and documentation submitted by the firm and the worker concerning the work relationship, the firm's office staff provided the worker with her patients. The firm provided administrative support for billing and scheduling. The worker personally performed her services at the firm's premises over a number of years.

The firm provided the office space, equipment, and supplies for the worker to perform her services. The firm paid the worker on a bi-weekly basis. The worker had no investment in facilities and did not have the opportunity for profit or loss. The worker was free to terminate her services without incurring any liabilities. The worker's therapy services were integral to the services provided by the firm.

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.

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.

If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, 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.

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.

Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Therefore, the firm exercised direction and control over the services performed by the worker to establish that an employee/employer relationship existed.