

SS-8 Determination—Determination for Public Inspection

Occupation 05ITE Personal Service Provider	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 massage therapy school. The worker performed services as a teach for tax years 2009 through 2018. The firm consistently reported the income on Form 1099-MISC. The firm has indicated it is industry practice to treat the teachers as independent contractors. The firm indicated all of the teachers sign a contract to teach as independent contractors. The firm indicated the teachers do not submit regular oral or written reports. They only report student attendance (taken at the beginning of each class) and test grades. They work independently and are not supervised. They are paid by the job. They are paid semimonthly for the hours taught. the teacher provide their own teaching materials. They are free to teach for other firms. They can be fired if the teaching is not provided according to contract specifications. The teachers tell them the days of the week and times they are available. Many have their own massage therapy businesses. once the agreed class/duration is completed, there is no further relationship between the school and the teacher. Per state law the classes must be taught at the school. The firm indicated the worker was fired.

The worker agreed there had been no orientation, but at least annually, (often more frequently) her performance was reviewed and suggestions made to change to curriculum, handouts, etc. She agreed the workers are asked to provide any dates they are unavailable, then the school made the schedules. The firm determined who taught what subjects and in what order. The hours varied depending on the class schedules. They were required to arrive 15 minutes before start of classes. All services performed on firm premises. Random staff meetings, annual and random evaluation meetings. She was paid extra to attend. She was required to perform her services personally. She agreed the firm hired and paid all workers. she indicated the firm provided the location, all equipment and handouts. She stated she was paid by the hour and reimbursed for copies and charts. The customer paid the firm. All work was performed under the firm's business name. She agreed she was fired.

Both parties provided a copy of the independent contractor agreement between parties. she was contracted in 2018 to perform five hundred hours of Massage Therapy classes. Forty five in Business Practices and Ethics and forty in Pathology. With permission from the owner, she could substitute for another teacher. The teacher would be paid Fifteen dollars per hour for hours worked developing/revise curriculum, develop/revising tests, etc. She agreed to attend up to two teacher staff meetings per year, paid at the rate of twenty-five dollars for each attendance. She agrees to teach for the four semester programs for the year of 2018. She was to be paid an hourly rate of Forty dollars an hour, paid semimonthly. There was a five year non-compete agreement to not teach massage therapy.

A copy of the schools Code of Ethics and Standard Practices was also provided. To ensure an acceptable level of performance while teaching, the Director would perform teacher evaluations. It further lists the schools rules and regulations they were required to follow.

Analysis

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 services were performed under the firm's business name and reputation. She was required to follow the schools' curriculum, was evaluated on her performance. Services were performed on a continuing basis and was not a one time occurrence. The worker was paid by the hour for the work performed. She was required to follow the firm's rules and regulations. An individual may perform services to others and be an employee of each entity.