

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Dental Hygienist

Determination:

☒ 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**

Information provided indicated the firm is a dental office. The worker performed services for the firm as a dental hygienist in tax year 2017. The firm reported the income on Form 1099-MISC. They felt since the worker was a licensed dental hygienist and filling a temporary position and she also performed services for other dental offices, she qualified as an independent contractor. She was converted to employee status as of the first of 2018 as they hired her on full time. The firm indicated work assignments were based on her availability and the patient load. The worker would contact the dentist if there were any complaints or problems. The worker would let the firm know a week in advance if she was available. They would then schedule patients accordingly. She was not required to attend staff meetings. The firm provided the hygiene instruments and patient room. The worker was paid on a daily basis. The patients paid the firm. The firm indicated either party could terminate the work relationship without incurring a penalty or liability.

The worker stated she was asked to cover shifts other employees were unable due to illness etc. She indicated the firm determined the days she worked as well as scheduled patients. She indicated the work day was eight to five. She was required to notate each patient chart as to the treatments delivered. All work was performed on the firm premises, utilizing the firm's equipment and supplies. She indicated she was paid on per diem. She agreed the patient paid the firm. The firm did carry workmen's compensation insurance. All work was/is performed under the firm's business name.

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.

-If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, 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, 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.

-The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the e

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. The fact the worker is a licensed dental hygienist and performed services on a part time basis does not indicate an independent contractor. Dental Hygienists are required by law to perform services under the direction and supervision of a fully licensed dentist. The worker cannot own her own practice/business as a dental hygienist. Therefore, whether she worked part time or full time, the same services were performed for the firm. The firm scheduled the patients and directed the treatments given. The worker was a trained hygienist so direct supervision or instruction was not necessary, however the firm retained the right to do so. The fact the worker performed services for others, in many instances (to include this one) also does not indicate a person is in business for themselves, but merely trying to work a full time work schedule. In the instant case, she may have performed the same services for other dental facilities, but again, she would have had to practice under the direction of the officiating dentist.