

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS-Medical Practitioners/Scientists/Therapists	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 indicates the firm is a nurse staffing company that provides in home health care aids to elderly/sick people. The worker performed services for the firm as a home health care aide for tax years 2008 through 2011. The worker has indicated she had previous training in the health care field. The firm reported the income on Form 1099-MISC. The work assignments were given from the firm. The firm and the client determined the care plan that was required. Daily reports were required as to the care provided. She provide around the clock live in care for the clients of the firm. She would work one to two weeks, then have one to two weeks off. Meetings were held as scheduled by the firm. She was required to perform her services personally. The worker indicated the firm provided hygienic gloves. The worker indicated she was paid One Hundred dollars per day. The client paid the firm for the services received. The firm did carry workmen's compensation insurance. The worker indicated she was given paid holidays. Either party could terminate the work relationship without incurring a penalty or liability. In 2011 the income was reported on Form W-2 but was paid under [REDACTED] instead of [REDACTED]. The worker indicated there were no changes in services.

The firm stated they did not offer the worker a job. Rather the firm only offered opportunities. The firm points out in the agreement she was not required to accept any job. She was not required to accept any minimum number of referrals. The firm does the pre background-screened, pre credential verifications. When a client contacts the firm, they review their list of candidates and determines who best fits the criteria the client is looking for. Usually the first person referred was introduced to the client. They determine if they can work together, if not, the firm sends another candidate.

The firm states they are a registry, not a provider, it functions as a broker. The firm indicated no training is given. No work assignments are given, as they indicate the firm does not retain the right to compel the worker to take a job or accept an offered client opportunity. She was free to perform her services as she wished (according to the contract as long as they were consistent with the firm's rules and regulations.) The worker was required to call 911 or contact the client's family member or appointed designee if there were issues. The firm states in one context the firm would act as a mediator, to help those parties resolve an issue. In that case it would not be a decision maker, it would simply function as an intermediary to help resolve an issue of disagreement. The client would end the work relationship with the worker. (According to the contract, the firm had the right to terminate the work relationship for various reasons). If they did ask the firm to do on their behalf, the firm did so purely as a messenger, the firm itself had no right to terminate the home care relationship. The worker was not required to submit any records. (According to the contract she was required to submit daily services documentation on the firm's [REDACTED] Time and Attendance system for the time spent on each assignment. The worker submitted to the firm daily invoices on forms provided by the firm, which were countersigned by the client to reflect the hours worked. The worker and the client determined the work schedule. The firm states the client paid the worker through the firm (taxpayer). The Firm (taxpayer) bills the client and collects for the client. the firm routinely advances clients payments to a caregiver. The firm indicated no benefits are given to caregivers. The worker ceased performing services for the firm in 2011.

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

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. Although the firm has indicated they are simply a nurse registry, the work relationship was on going with the firm. The firm in fact bills and collected from the client, provided the forms for which the client submitted her weekly hours, that were signed by the client. The worker is a Licensed Certified Nurses aide, therefor is not licensed to practice unless done so under an agency. The firm has stated they advanced payments to the worker, this is indicative of an employer/employee relationship. The client would contact the firm if there were issues, and the firm would act as an intermediary if necessary. All work was performed under the firm's business name and business reputation. Although she was free to perform those services as she saw fit, they were to be consistent with the firm's rules and regulations.