

**SS-8 Determination—Determination for Public Inspection**

Occupation

06AAS Aides/Assistants

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**

The firm is operating a dental business. The firm engaged the worker who was a licensed dental physician to perform dental services at the firm's place of business through an application process. The firm scheduled patients for services and scheduled the worker to perform services on mutually agreed upon days and times to perform dental services. The worker and firm determined the methods used to perform the services. The worker contacted the firm owners regarding any problems or complaints for resolution and the worker was required to resolve them. The workers' routine varied based on scheduled appointment needs and the workers' availability. The worker performed the services personally at the firm's place of business. The worker was not required to perform the services personally and if the worker hired substitutes or helpers and paid them the firm would not reimburse the worker per the firm. The worker indicated the firm hired and paid substitutes or helpers if needed.

The firm provided the office, equipment, materials, and supplies. The worker provided personal items, license, and malpractice insurance. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker on a piecework basis. The customers paid the firm through various resources. The firm did not carry workers' compensation insurance. The worker's economic loss and financial risks were related to possible damages to equipment and malpractice claims by customers. The firm determined the level of payment for the products and services.

There were no written contracts between the firm and worker. The worker and firm retained the right to terminate the working relationship at any time without incurring any liability. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker advertised services with business cards. The firm represented the worker as a dentist to the customers. The worker notified the firm that she no longer wanted to perform services at the firm's facility.

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**Analysis**

Employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. The firm engaged the worker who had experience, was licensed, and carried malpractice insurance to perform dental services at the firm's place of business part-time as needed through an application process. The firm scheduled the customers and the worker to perform services based on the worker's availability and the firm's business needs. The firm required the worker to contact the firm regarding problems or complaints and to resolve them. The firm required the worker to submit monthly invoices for services. The firm did not require the worker to perform the services personally. The worker performed the services at the firm's place of business. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going significant business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business at this time and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker on a piecework basis and the customers paid the firm through available resources. The worker incurred expenses for a license, personal items, and insurance. The worker could not suffer any economic loss and did not have control over profits made nor the risk of losses being incurred with regard to the services performed for the firm's business operation. The risk of losses being incurred for damages or malpractice issues would not be considered as having control over the day to day profits and losses in the operation of a business. The firm determined the level of payment for the products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no written contracts between the firm and worker. The worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. The worker personally performed services for your business at your place of business on a regular and continuous part-time scheduled basis over a period of several months. The worker advertised her credentials with business cards. The firm referred to the worker as a dentist to the customers. The worker could not suffer

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.