

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS 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

The firm is a dentist running a dental office and the firm engaged the worker as a temporary dental hygienist. The worker was experienced and licensed so no formal training was provided. The firm assigned the worker jobs based on business needs. The firm required the worker to contact the firm regarding resolution of problems or complaints. The worker performed services on a firm established schedule based on appointments set up by the firm at the firm's office location. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease anything or incur any expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for products and services based on insurance companies or resources used by the customers. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker did no advertising as a business. The firm referred to the worker as a contractor/dental hygienist under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an 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. 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. 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 capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any 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 an hourly wage and the firm was paid through the customers' resources for the services. The worker had no control over profit and loss with regard to the services performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no 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. The worker did no advertising as a business to the public. The worker personally performed services for the firm on a part-time temporary basis as needed by the firm over several weeks under the firm's business name.

Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. 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.