

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 worker initiated the request for a determination of her work status as a registered dental hygienist in tax year 2017. The firm's business is described as a dental office.

The firm's response was signed by the dentist/owner. The firm provides dental services; the worker performed services as a dental hygienist in a temporary capacity until a full time hygienist was hired.

The firm and worker concur that there was no specific training and instructions given to the worker. The work assignments were the scheduled appointments. The firm indicated the worker determined the methods by which the services were performed; the worker disagreed. Both parties concurred that any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered on the firm's premises and under the firm's name. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm provided all dental equipment, supplies, and materials. The worker furnished nothing; she did not lease equipment, space, or a facility and she did not incur expenses in the performance of the job. The worker responded that she was paid a daily rate; the firm equated the compensation to an hourly wage. Both parties agree that the customers/patients paid the firm. The firm acknowledged the worker was covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm established level of payment for services provided or products sold.

There were no benefits extended to the worker in this temporary position. Either party could terminate the work relationship without incurring a liability or penalty. The worker was performing same or similar services for others during the same time frame.

According to the State Board of Dentistry, §766. Dental hygienists, employment; operations limited

'Any licensed dentist licensed in [REDACTED] of good standing, public school, or federal or state institution where health care is provided may employ a licensed dental hygienist who may perform such duties as may be authorized by the board. A licensed dental hygienist may operate under a licensed [REDACTED] dentist's direct or general supervision as defined in *** 46:XXXIII.108, within the limits prescribed by the board in *** 46:XXXIII.701. The licensed dental hygienist shall be responsible for providing notification to the board of the name and location of his employer.'

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. 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 the firm's business.

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.