

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Aides/Assistants	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

The firm is in the business of operating a dental practice. The worker was engaged on a temporary, substitute basis as a dental hygienist. She received a 2017 Form 1099-MISC for her services and continued to work for the firm in 2018 as well. There was no written agreement.

The firm indicated that it provided no instructions or training; the office would call her to see if she was available. The firm told the worker what treatment was to be performed on patients as well as the length of time and when scheduled. She received her work assignments through the firm's computer and router slips. The firm determined the methods by which the assignments were performed; however, the firm noted that it was according to hygiene protocol. Both parties agreed that the firm's office manager would be contacted if any issues or problem arose. The worker entered any reports into the firm's computer. Both also agreed that her daily hours varied according to the firm's needs at its office location. Both agreed that she was to provide the services personally with only the firm hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided all equipment, materials, supplies, workplace, and furnishings. The worker was paid by the hour and had no other economic risk. The firm noted that it provided worker's compensation insurance on the worker. The customer paid the firm. Each party indicated that the other established the level of payment for services.

Both the firm and worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did perform similar services for others during the same time period. The relationship has not ended as the worker still provides temporary, substitute services for the firm.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm obtained the patients, scheduled the services and engaged the worker on a temporary basis. She presumably filled-in for the firm's regular hygienists as she provided services when the firm needed her and she was available. The worker was an experienced hygienist; therefore, she had some latitude when providing her services. However, the same direction and control the firm had over its full-time workers also existed for any part-time workers as both had to work under a licensed dentist's supervision. Once accepting the work, she worked according to the firm's schedule. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. All her services for the firm were performed at the firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker. The worker was to provide the services personally indicating that the firm was interested in the methods used to accomplish the work as well as in the results. While the worker's services were sporadic, a continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. The firm had the investment in the office, equipment, tools, and supplies. The worker received an hourly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was engaged as a dental hygienist for the firm's dental practice. When doing so, the worker was not engaged in a separate business venture, and apparently would be prohibited from doing so. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.