

**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 in the business of operating a dental practice. The worker was engaged as a dental hygienist for a temporary/fill-in position. She received a 2017 Form 1099-MISC for her services. There was no written agreement.

The firm noted that it provided no training. The worker indicated that she received instructions about the operation of various dental office equipment. The firm gave her a list of the patients scheduled for her workday. Each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm would be contacted if any issues or problems arose. The firm noted that the worker submitted dental notes and treatment plans. The worker's routine consisted of arriving prior to the first appointment time to review the schedule with the dentist and staff; she completed all treatments on patients and sterilized equipment-all at the firm's office. The firm indicated that she treated the scheduled patients during the firm's office hours at the firm's location. Both agreed that the worker was to personally provide the services; only the worker noted that the firm would hire and pay any substitutes.

The firm provided all instruments, the dental chair, and supplies as well as the facility. The firm indicated that the worker had the expenses of her professional license, loans, continuing education, uniforms and malpractice insurance. The worker was paid an hourly rate and had no other economic risk. The customer paid the firm. Both parties agreed that the worker did not establish the level of payment for services.

Both the firm and the 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. The relationship ended when the office no longer needed a fill-in; the firm noted that the worker chose not to accept further work.

---

## 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 worker was a registered dental hygienist. Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite the absence of direct control, it cannot be doubted that many professionals are employees. The firm scheduled the patients' appointments and assigned them to the worker. The worker provided her services at the firm's location at the times scheduled by the firm. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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.

In addition, her services were provided personally at the firm's location. Again, these elements show the firm's control over the worker. 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, especially if the work could be done elsewhere. The fact that the worker was to provide her services personally showed that, presumably, the person or persons for whom the services were performed, were interested in the methods used to accomplish the work as well as in the results.

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. It was the firm that had the investment in the facility and the equipment. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. 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. The fact that her services were needed on a temporary basis did not change the firm's right to direct and control her behavior, whether or not they exercised that right. There is no difference for federal employment taxes between full-time employees and part-time employees as well as for employees hired for short time periods. When working for the firm, the worker was not engaged in an separate business venture. Her services instead were essential and necessary to the firm's operations. 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 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.