

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Intake Counselor	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 organization is a tax exempt 501(c)(3) organization that provides a drug and alcohol outpatient treatment facility. The organization engaged the worker as an intake counselor for their patients. The worker was required to fill out an application for the position. There was no written agreement between the two parties.

The worker stated he was trained to do the intakes by both the his supervisor (Administrative Director), and the project director. The worker received his assignments from the organization and the organization determined how those assignments should be performed. The worker was required to type up Psychosocial Evaluations and report the information he discovered during the intake process. The worker was required to report his hours to the organization. The worker's schedule was dependent upon whether or not the organization had work for him. The worker performed his services at the organization's location. The worker was required to perform his services personally.

The organization provided the location, office equipment and supplies for the worker to perform his services. No expenses were incurred by the worker. The worker was paid on an hourly basis. The customers paid the organization for the services they received. The organization established the level of payment for the services rendered by the worker.

The worker received \$100/yr. toward training. Either party could terminate the work relationship without incurring a liability. The worker did not perform similar services for others. The worker performed his services under the organization's business name as the organizations intake worker. The worker terminated his services.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

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 the instant case, the worker was required to perform his service under the organization's business name which showed the worker's services were integrated into the organization's daily operations.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the instant case, the worker was trained how to perform his service by a supervisor and was required to perform his service personally. This showed the organization was interested in the methods used as well as the end result as an employer.

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 organization 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 organization has the right to direct and control the performance of the workers. In the instant case, the worker was paid by the hour according to the amount of hours he reported to the organization which showed financial control by the organization.

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. In the instant case, the worker could not suffer a significant loss as operating their own business. The worker did not have a significant investment in the performance of his duties and could not suffer a significant loss in the operation of his own business.

The worker was an employee according to common law. The information provided by both parties showed the organization controlled when they required the worker to fill out an application and then trained the worker according to their business needs. Control by the organization was also demonstrated since the organization required the worker to perform his services personally. It was the organization that had the financial investment as the organization provided the worker with the location, office equipment and supplies for the worker to perform his services. The fact the worker received a \$100/yr. training benefit indicated an employer-employee relationship existed. The worker was the intake counselor for the organization and performed his services under the organization's business name which demonstrated the worker's services were integrated into the organization's daily business operations.

Based on the above analysis, we conclude that the organization 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 go to www.irs.gov for further information.

Organization: Publication 4341

Worker: Notice 989