

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Medical Assistant

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 providing care to patients with kidney disease and hypertension. The worker was engaged as a medical receptionist taking patient phone calls and other administrator tasks. The worker obtained the job through a school placement. She received a 2017 Form 1099-MISC from the firm. There was no written agreement.

The firm indicated that training was provided by the firm's senior medical assistant who gave the worker her work assignments when the worker came in to work. The firm determined the methods by which the assignments were performed as the worker did so under the direction of the firm and would be contacted if any issues or problems arose. There were no required reports. The worker worked during the firm's business hours at times convenient to her. There were no meetings. The firm noted that the worker was to provide the services personally. Only the firm would hire and pay any substitute workers, according to the worker.

The firm provided the phone, computer, office supplies as well as the office itself; the worker supplied a stethoscope and scrubs. The worker noted she was paid by the hour and had no other economic risk. The firm indicated that her compensation a stipend; they also added that they had given her a hardship advance. The customer paid the firm. The worker noted that she 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 not perform similar services for others. The worker was a trainee. The relationship ended when the worker quit.

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, even if through a school placement. The firm provided training; understandable as she was designated as a trainee. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The firm indicated that she reported to work during its open hours at times convenient to her; however, 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. It would be unreasonable to assume that the firm did not know when the worker was scheduled to report to work as she not only received training, supervision, but her duties included answering the phone. 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 supported by the fact that she received training from the firm. While the worker's services were for only brief period of time, 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 for her services whether or not designated as a stipend. She 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 medical assistant for the firm's medical office. When working for the firm, the worker was not engaged in an separate business venture. Her services were integrated into 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 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.