

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Dental Hygienist	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 office. The worker was engaged as a part-time, temporary dental hygienist. She received a 2017 Form 1099-MISC for her services. There was no written agreement.

Both the firm and the worker agreed that the firm gave the worker instructions as to what services needed to be performed as well as how the office was run and how the equipment was to be used. She received her work assignments via the firm's schedule or verbally. Both parties agreed that the firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker submitted patient chart notes. She worked set scheduled daily hours or whenever patients were scheduled at the firm's office. There were no meetings. The firm hired and paid any substitutes. Only the worker noted that she was required to provide the services personally.

Both the firm and the worker agreed that the firm provided all equipment, tools, and supplies. The worker was paid an hourly rate and had no other economic risk. The customer paid the firm. 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 worker found a full-time job and 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 engaged the worker to provide dental hygienist services in its dental practice. The worker was required to work under the supervision of a licensed dentist and provided her services to patients scheduled by the firm. While 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. 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. Although the worker's services were for a brief period of time, her services were continuous. 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. It was the firm that had the investment in the dental office including the equipment, tools and supplies. The worker simply 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 required to practice under a licensed dentist. When doing so, the worker was not engaged in an separate business venture nor could she be. The fact that her services were temporary and part-time also did not establish a business presence. 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.