

# SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Dental Hygienist

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 a dental office and the worker was engaged by the firm through an application process to perform full-time dental hygienist services for the firm's business operation. The firm and worker entered into a verbal working relationship agreement. The firm and worker determined the training and instructions needed to perform the services. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the office manager regarding any problems or complaints for resolution. The firm required the worker to provide the firm with time and work reports. The firm's office manager scheduled patients appointments and the worker worked the hours indicated as being needed to perform the services. The firm required the worker to perform all services at the firm's place of business. The worker was not required to attend any meetings. The firm required the worker to perform the services personally. The worker did not hire or pay any substitutes or helpers.

The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker provided personal items and paid for required courses needed to be attended to keep her credentials. The worker did not lease anything or incur any on-going significant business expenses. The firm paid the worker an hourly wage and the firm was paid through customer resources. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm and insurance companies determined the level of payment for products and services.

There were no formal written contracts between the firm and worker. The firm indicated there was a verbal contract. The firm did not provide the worker with any benefits. The firm did not know if the worker performed similar services for others or advertise as a business to the public. The worker indicated no similar services were performed for others while performing services for the firm. The worker did no advertising as a business to the public. The worker personally performed services for the firm's business customers under the firm's business name. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

The firm issued the worker both a Form W-2 and Form 1099-MISC during the working relationship and the services remained the same. The only change indicated was the worker performed services originally full-time and then changed to part-time as needed.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no significant financial business investments and no control over profit and loss due to significant on-going business capital outlays being made. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm for products and services through their resources. The firm provided all the equipment, materials, and supplies needed by the worker to perform the services for the firm's customers. The firm determined the level of payment for products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no legal written binding contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business customers under the firm's business name originally full-time and then part-time. The firm issued the worker both a Form W-2 and Form 1099-MISC for the same services.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Therefore based on the above information we have determined the worker to have been an employee under common law for the entire working relationship.