

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. The firm engaged the worker to perform dental hygienist services on a temporary short-term basis for the firm's business. The worker was registered but not licensed to perform services as an independent contractor in the state but was required to work under direct general supervision of a licensed dentist. The firm provided the worker with instruction on what services the firm's customers needed to be performed. The firm's designated front desk manager scheduled patients for the firm's business and the firm determined the methods used by the worker to perform the services. The worker was required to contact the dentist regarding problems or complaints for resolution. The firm determined the worker's work schedule. The firm required the worker to perform services at the firm's place of business personally. The firm hired and paid substitutes or helpers.

The firm provided all the equipment, materials, and supplies needed by the worker to perform the services. The worker did not lease anything or incur any expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for products and services.

There were no contracts between the firm and worker. The worker did not receive any benefits. The worker did perform similar services for others or advertise as a business to the public. The firm represented the worker as a temporary hygienist under the firm's business name to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

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 financial business investments and no control over profit and loss due to significant 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. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services at the firm's place of business under the firm's business name as needed.

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.