

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Medical Practitioners	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 a dental business and the worker was engaged as a part-time dental hygienist. The worker received the job through social media advertising herself as a licensed dental hygienist. The firm allowed the worker to determine a work schedule and perform services for others. The firm provided no training or instructions due to the worker's qualifications and experience. The firm notified the worker through text messages of work being available to perform and the worker determined if she was available to perform the services. The firm and worker determined the methods used to perform the services. The firm required the worker to resolve problems or complaints as necessary. The worker verbally reported time related to performance of services to the firm. The worker determined her work schedule for scheduling patient services. The firm required the worker to perform the services personally.

The firm provided the business, business equipment and worker provided personal items used for cleaning. The worker did not lease equipment or space. The worker incurred personal item related expenses. The firm paid the worker a daily rate and the customers paid the firm through various resources. The firm did not allow drawing accounts. The firm did not carry workers compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the performance of the services. The firm determined the level of payment for products and services.

There were no formal written contracts. The firm stated there was a verbal working relationship agreement. The firm provided no benefits to the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did not advertise as a business to the public. The firm referred to the worker as an independent contractor under her name and qualifications to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The worker quit when more hours were offered by another business that the firm could offer her.

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. The firm allowed the worker to determined a work schedule and provide personal items to perform the services. The firm required the worker to perform the services personally at the firm's place of business. 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 on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no on-going significant 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. The firm determined the level of payment for products and services. The firm paid the worker a set amount per day and the customers paid the firm through various resources. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker.

There were no written formal contracts between the firm and the worker. The firm indicated there was a verbal working relationship agreement. The worker did perform similar services for others while performing services for the firm 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 did not advertise as a business to the public but did advertise her credentials and availability to perform services for dental businesses. The firm referred to the worker as a dental hygienist by name to the customers.

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.