

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 and orthodontic office. The worker was engaged as a registered dental hygienist on a temporary and fill-in basis. She received a 2017 Form 1099-MISC for her services; she also continued to work in 2018 as well. There was no written agreement.

Only the worker noted that the firm provided instructions about the worker's use of equipment and patient contact. The worker would see patients according to the firm's scheduled appointments. The firm determined the methods by which the assignments were performed though the firm noted that there was a standard of care for the industry. Both parties noted that the firm/dentist would be contacted if any issues or problems arose. Both parties agreed that the worker made notes on her services provided to each patient. The worker's work routine was to arrive before the first scheduled patient, perform services as required; then after the last patient, she cleaned and set-up for the next day. The firm noted that the worker's hours varied, dependent on the day she worked. Both parties agreed that all services were performed at the firm's office. There were no meetings. Both also agreed that the worker was required to provide the services personally with only the firm hiring/paying any substitute workers.

Both the firm and the worker agreed that the firm provided the office, equipment, and supplies. The worker supplies scrubs and loupes. Both parties agreed that she was paid an hourly rate and had no other economic risk. The customer paid the firm. Each indicated that the other determined 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. Both parties agreed that the worker did perform similar services for others. The worker noted that she worked under the firm's name; the firm noted that she filled-in for their regular hygienist. The relationship had not ended.

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 was a dental practice who engaged the worker as a fill-in, temporary dental hygienist. While she did not work full-time for the firm, she was still required to work under the supervision of a licensed dentist. The firm scheduled appointments for its patients which would require the worker to adhere to the appointment times, upon accepting the work. The worker worked when needed and if available; 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. In addition, the worker's services for the firm were all performed at the firm's location. This factor also suggests the firm's ability to retain control over the worker.

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 worker had no investment in the office, equipment or supplies. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. The worker simply received an hourly rate of pay for her services 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 for the firm's dental office. When working for the firm, the worker was not engaged in an separate business venture, nor could she be. The fact that her services were for a temporary situation did not make her self-employed. 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.

It is acknowledged that the worker may have worked for others performing similar services. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them.

There is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods. The same direction and control the firm had over their full-time workers also existed for a worker who worked part-time or temporarily under similar circumstances.

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.