

SS-8 Determination—Determination for Public Inspection

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| Occupation 06AAS Aides/Assistants | 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

Information provided for this case indicates the firm is a veterinary hospital. In 2015, the firm engaged the worker, under mentorship of an internship post graduation, to perform services as an assistant to veterinarians. In this capacity the worker assisted with the management of hospitalized patients, and made appointments. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation. Beginning in August of 2016, the firm offered the worker a position as an associate veterinarian whose services were performed as an employee of the firm, and services continued into tax year 2017. For tax years 2016 and 2017, the firm issued to the worker a Form W-2 at year-end to report the monies she received for these services as wages.

Under mentorship, the worker received specific training and instructions regarding veterinary medicine and surgery. Work assignments were received from the firm's owner, and the office staff scheduled appointments. Work methods were determined by the firm's owner and the worker. The worker was required to perform her services personally at the firm's location, and to report problems and complaints to the firm's owner for resolution purposes.

The firm provided the facilities, equipment, tools, and supplies needed to perform the services. The firm paid the worker on both an hourly wage basis, and salary basis for her services. Clients paid the firm for services rendered. The worker did not incur work related expenses, and did not incur economic loss or financial risks related to the services she performed for the firm. The firm reimbursed the worker for expenses related to licenses, membership fees, continuing education (books, seminars, etc).

The firm covered the worker under workers' compensation insurance. Employment benefits (personal days, paid vacations, sick pay, paid holidays, insurance benefits, bonuses, simple IRA) were made available to the worker. The worker did not perform similar services for others, and did not advertise her services to others while engaged by the firm. The work relationship was continuous and could have been terminated by either party at anytime without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed her services under the firm's supervision, following its instructions, training, work methods, schedule, and routine. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools and supplies, and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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 common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov