

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Aides/Assistants

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 general dentistry practice. The worker was engaged as a dental hygienist. She received a Form 1099-MISC for her services in 2017. There was a written agreement.

Both the firm and the worker agreed that the firm provided instructions based on the dentist's diagnosis for patient cleaning. The worker received her work assignments daily by the firm scheduling the appointments. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker submitted notes of services rendered to each patient. She worked set scheduled hours at the firm's office location for a brief period of time. Only the firm would hire any substitutes.

Both the firm and the worker agreed that the firm provided the office, furnishings, equipment, tools and supplies. The worker supplied the scrubs, lab coat, and protective eye wear for which she was not reimbursed. The worker noted that she was paid an hourly rate and had no other economic risk. The firm however indicated that she was paid a daily rate. Both parties agreed that the customer paid the firm. The firm noted that it carried workers' compensation insurance on the worker. Both also agreed that the worker did not establish 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. The worker did not perform similar services for others during the same time period. The relationship has 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 is a dental practice that engaged the worker as a dental hygienist for a brief period of time. The worker was a registered dental hygienist who was required to perform her services under a dentist's supervision. The firm gave the worker her work assignments by scheduling patient appointments. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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. While the worker's services were temporary and for a limited time period, her services were continuous. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 dental office, equipment, tools or materials. She received an hourly rate of pay and had no other economic risk other than the loss of her compensation. 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. It is acknowledged that the firm indicated that the worker was paid by the day but if it was based on the number of hours worked, her compensation would still be hourly.

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 a dental hygienist required to work under a licensed dentist. When doing so, the worker was not engaged in a separate business venture. The fact that her services were temporary 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.

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.