

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 dental business. The firm engaged the worker through an agreement with an employment agency to perform part-time as needed dental hygienist services at the firm's business location for the firm's customers. There were no contracts between the firm and worker. The firm supervised the worker's services. The employment agency assigned the worker to the firm to perform services and the firm assigned worker services to perform on the firm's customers. The firm required the worker to contact the employment agency regarding any problems or complaints for resolution. The firm assigned worker work schedules based on customer requests and worker's availability. The worker was required to perform the services personally.

The firm provided everything the worker needed to perform the services. The worker provided personal items. The worker did not lease anything or incur any business expenses. The firm paid the worker a daily set amount and the firm's customers paid the firm through various resources. The firm did not carry workers' compensation insurance. The firm and employment agency determined the rate of pay the worker received for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. 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. The worker did no advertising as a business to the public. The firm represented the worker as a dental hygienist 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 investment or on-going risk with regard to performance of the services. The firm paid the worker a daily rate of pay and the firm's customers paid the firm through various resources. The firm determined the level of payment for the services paid to the employment agency for providing the worker to perform temporary services for the firm's business operation. 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. There was a signed agreement between the firm and the employment agency that addressed employment issues. 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 on a regular and continuous as needed basis for the firm's customers at the firm's place of business over a period of about 6 months. The services the worker performed were under the firm's business name. The worker did no advertising as a business to the public.

Both the firm and the worker 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.

Based on the information provided by both the firm and the worker we have determined the worker to have been an employee under common law.