

SS-8 Determination—Determination for Public Inspection

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

The firm is in the business of operating a dental office. The worker was engaged as a dental hygienist. She received a Form 1099-MISC for her services in 2012 through 2017. She had also received Forms W-2 in 2006 through 2011 for the same services. There was no written agreement.

The firm provided instructions regarding the worker's working hours. Both parties agreed that the worker received her work assignments via phone and on an as-needed basis. The firm determined the methods by which the assignments were performed; however, the firm indicated that the [REDACTED] license determined the methods. Both also agreed that the firm would be contacted if any issues or problems arose. The worker entered notes on the patients' charts. On days when she was called in, she worked noon until early evening at the firm's location. There were no meetings. Both parties agreed that the worker was required to provide the services personally; only the firm hired any substitutes.

Both the firm and the worker agreed that the firm provided all materials and supplies as well as the office itself. The worker supplied a uniform. She was paid an hourly rate and had no other economic risk. The customer paid the firm and the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. She worked under the firm's name when performing services for the firm as a dental hygienist. 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 worker was engaged as a dental hygienist who had to work under the supervision of a licensed dentist. Her services remained essentially the same during the entire work relationship. The worker worked part-time and as-needed. She would be contacted when needed. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. The worker's services for the firm were all performed at the firm's location, again a factor that suggests the firm's ability to retain control over the worker. The fact that the worker was required to provide the services personally also indicates that the firm was concerned in the methods as well as the results of the work performed.

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. She simply received an hourly rate of pay 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 practice. When doing so, the worker was not engaged in a separate business venture, nor could she be. The fact that her services were for limited hours also did not make her self-employed. Her services were necessary and an integral part of the firm's dental practice. 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.