

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 practice. The worker was engaged to perform services as a dental hygienist, to provide coverage for the firm's other dental hygienists on an as needed basis. 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.

The worker was a registered/licensed professional, and did not require specific training or instructions from the firm on how to perform her services. Work methods were determined by the firm's dentist and the worker. Work related issues were reported to the firm's office manager for resolution purposes. The firm required the worker to perform her services personally, at its office location, and to chart the services she performed for each patient, in patient records.

The firm provided the worker with the facilities, gloves, dental unit, and chairs needed to perform her services. The worker provided her own dental instruments. The worker incurred expenses for the items she provided, and for fuel, uniforms, and loupes maintenance. The firm paid the worker a daily rate as payment for her services. Patients made payment to the firm for services rendered. The worker did not incur economic loss or financial risks related to the services she performed for the firm.

The firm provided workers' compensation insurance coverage. The firm did not make employment benefits made available to the worker. The worker performed similar services for others, but did not personally advertise as being available to perform similar services to the public. The work relationship could have been terminated by either party at any time 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 doctor's supervision, following the firm's work methods, schedule, and routine. The worker's services were performed in the name of the firm, and she used the firm's facilities, equipment, tools, and supplies. These facts support that 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, and therefore retained behavioral control of the work relationship.

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