

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Dental Hygienist	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 finds the worker performed services as a dental hygienist for the firm on a temporary basis in 2017. The firm has confirmed she was transferred to employee status in 2018. No change in services have taken place.

Analysis

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

conclusion:

Based on the information provided and common law, I find the worker to have been an employee for all services performed. The firm has correctly reclassified the worker as an employee in 2018 and issued Form W-2 as is applicable. However, the firm should have corrected the 1099-MISC document issued in 2017, as those wages should also have been reported on Form W-2. Dental Hygienists cannot be paid as independent contractors. They must perform services under the direction a licensed Dentist. It does not matter whether those services are part time or temporary.