

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 indicated the firm provides general dentistry services to its clients. The worker performed services as a dental hygienist in 2016 and 2017 on a temporary basis. The firm reported the income on Form 1099-MISC, representing the worker as an independent contractor. The firm indicated the worker was obtained through a separate agency, which they held a contract for staffing agreement. No agreement was evident between the worker and the firm. The firm indicated the worker completed Form W-9, not Form W-4. It was not indicated who provided the Form for completion, the firm, the worker, or the agency. The firm indicated the worker is a licensed hygienist, therefore additional training was not required. The worker was provided a list of patient appointments scheduled for the days in question. Per standard procedure the worker would chart the treatments provided per patient in each chart. All work was performed on firm premises, utilizing the firm's equipment and supplies. The worker was paid on a per day basis. The patients paid the firm. The services were no longer required.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business. Dental hygienists whether working part time or full time, cannot be treated as independent contractors. By law they must perform services under the direction and control of a licensed dentist. An independent contractor owns and operates their own business. All work was performed on the firm premises, as scheduled by the firm, utilizing the firm's equipment and supplies. The worker is paid on a per day basis. Although the worker was obtained through an employment agency, the firm not the agency paid the worker.