

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 payer is a sole proprietor operating a dental office to the general public. The payer engaged the worker as a dental hygienist. There was no written agreement between the two parties.

The worker was given instructions on how the payer wanted the services performed. The worker received her assignments from the payer. The worker stated the payer determined how the assignments should be performed. The worker relied upon the payer or office manager to resolve her problems and complaints. The worker was required to provide the payer with clinical notes for the patients. The worker had a schedule Monday through Friday. The worker performed her services at the payer's location. The worker was required to perform her services personally. The payer hired additional help or substitutes.

The payer provided the location and large equipment for the worker to perform her services. The worker did provide some of her own personal dental instruments. The worker did not lease any space to perform her services. The worker was paid on an hourly basis. The patients paid the payer directly for the services they received. The payer established the level of payment for the services provided.

The worker did not receive any benefits from the payer. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others at the same time she performed services for the payer. The payer did offer the worker a full time position after 3 months of service.

Analysis

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.

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. In the instant case, the worker performed services as a dental hygienist for the payer's patients in the payer's dental office which demonstrated the worker's services were integrated into the firm's daily activity.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the instant case, the payer instructed the worker what services to perform and required the worker to perform the services personally which indicated the payer was interested in the methods used as well as the end results as an employer. This was further demonstrated by the fact the worker was given her instructions on what services to perform.

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. In such instances, the payer assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the payer has the right to direct and control the performance of the workers. In the instant case, the worker was paid an hourly rate which showed financial control by the payer.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. In the instant case, the worker could not suffer a significant loss as operating their own business as the firm provided the location, office equipment and supplies for the worker to perform her services.

The worker was an employee according to common law. The information provided by both parties showed the worker received her assignments from the payer and also received instructions on how the payer wanted the services performed. The worker was dependent upon the payer to resolve any problems or complaints for her. The fact the worker was required to perform her services personally demonstrated the payer was interested in the methods used as well as the end result as an employer. The payer had the significant investment as the payer provided the location and large equipment for the worker to perform her service. The worker's services as a dental hygienist was integrated into the payer's daily operation of their dental office.

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 was a common law employee, and not an independent contractor operating a trade or business.

Please go to www.irs.gov for further information.

Firm: Publication 4341
Worker: Notice 989