

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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is in the dentistry business and the worker was engaged from January 2018 to December 2018 as a dental hygienist. The firm believes the worker was an independent contractor while performing services for them because she promoted herself as an independent licensed hygienist, she works for other locations, they had a verbal contracted agreement that she was to work two (2) days a week, they provided minimal instruction and less control over the worker to perform the task, the worker used her own method, and they looked at the end result. There was no written agreement between the firm and the worker. The firm states the worker agreed to work as an independent contractor.

The firm states they provided no training or instructions to the worker as she used her own methods and experience to perform her services. The worker was engaged to see scheduled patients and the firm states she determined how she serviced those clients. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit reports or attend meetings. The firm states the worker was required to personally perform her services Monday 9 a.m. to 5 p.m. and Tuesday 9 a.m. to 6 p.m. at their premises. The firm states the hiring and paying of substitutes or helpers did not apply in this case.

The firm provided the basic dental supplies and disposable items to the worker in order to perform her services. The firm states the worker provided hand instruments, otoscopy eye glass magnifier and light, and uniforms. The clients compensated the firm for services rendered by the worker and the firm states they compensated the worker at a flat rate. The worker was expected to replace/repair damaged equipment and she could come in later or leave early depending on the work volume. The firm states the worker did not establish the level of payment for the services provided.

The worker was not eligible for employee benefits. The worker performed similar services for others but she did not advertise her services. The firm states they represented the worker to their clients as a contracted dental hygienist and the worker represented herself as a licensed dental hygienist. Either party could terminate the work relationship at any time without incurring a liability. The worker terminated the work relationship.

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.

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, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. Often the skill level of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees. In most states, state law requires that a dental hygienist must work under the direction of a dentist. The worker provided her services on behalf of the firm rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the payer the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the worker only performed her services on a part-time basis, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

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. Although the worker provided tools normally associated with a dental hygienist, this is not considered a significant investment. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded. Therefore, the firm's statement that the worker was an independent contractor pursuant to a verbal agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

There was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services she performed for the firm and offering those services to the public. It is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him or her.

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.